

DISTRICT OF COLUMBIA OFFICIAL CODE

2001 Edition

TITLES 11 to 15

Organization and Jurisdiction of the Courts

Right to Remedy

Procedure Generally

Proof

Judgments and Executions; Fees and Costs



40th ANNIVERSARY
of
HOME RULE



Digitized by the Internet Archive
in 2014

DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Containing the Laws, general and permanent in their nature,
relating to or in force in the District of Columbia (Except such
laws as are of application in the General and Permanent
Laws of the United States) as of September 13, 2012.

VOLUME 8

Title 11

Organization and Jurisdiction of the Courts

to

Title 15

Judgments and Executions; Fees and Costs



LexisNexis®

COPYRIGHT © 2001-2012

**By
The District of Columbia
All Rights Reserved.**

4633810

ISBN 978-0-7698-6582-9 (Volume 8)

ISBN 978-0-7698-6495-2 (Set)

**Matthew Bender & Company, Inc.
701 East Water Street, Charlottesville, VA 22902
www.lexisnexus.com
Customer Service: 1-800-833-9844**

LexisNexis and the Knowledge Burst logo are registered trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

COUNCIL OF THE DISTRICT OF COLUMBIA

Phil Mendelson, *Chairman*

Yvette Alexander
Marion Barry
Anita Bonds
Muriel Bowser
David A. Catania
Mary M. Cheh

Jack Evans
Jim Graham
David Grosso
Kenyan R. McDuffie
Vincent B. Orange, Sr.
Tommy Wells

OFFICE OF THE GENERAL COUNSEL

Under Whose Direction This
Volume Has Been Prepared

V. David Zvenyach, *General Counsel*

John Hoellen, *Legislative Counsel*

Benjamin F. Bryant, Jr., *Codification Counsel*

Karen R. Barbour, *Legal Assistant*

*

Foreword to 2013 Commemorative Set

LexisNexis presents the 2013 republication of the District of Columbia Official Code, 2001 Edition to the D.C. bench and bar and to the citizens of the District of Columbia in a sincere belief that it will prove a material contribution to the orderly and efficient conduct of the government of the District and to the practice of law. LexisNexis is proud to help commemorate the 40th anniversary of Home Rule for the District of Columbia.

LexisNexis continues its tradition of excellence with its District of Columbia Official Code, 2001 Edition. This 2013 Volume 8 replaces any existing Volume 8 of the 2001 Edition and its 2012 Supplement, both of which may now be discarded, recycled, or retained for historical reference. Future supplements will be keyed to this 2013 Volume and not to any of its predecessors.

The District of Columbia Official Code, 2001 Edition, represents the eighth compilation of the laws of the District of Columbia and reflects an extensive renumbering of the 1981 Edition. Users should consult the historical citations at the end of each statute, and corresponding amendment notes, as guides to legislative currency. Research features such as case annotations, section references, effect of legislation notes, editor's notes, and the comprehensive index have been prepared by LexisNexis. Your set is kept up to date through regular supplementation, free access to the on-line Official Code at <http://www.lexisnexis.com/hottopics/dccode> and the periodic replacement of volumes. All case citations are Shepardized for accuracy and continued relevance. LexisNexis also publishes a District of Columbia Advance Legislative Service (ALS). The ALS gives you the latest session laws as they are passed, along with tables showing you which sections of the Code are affected.

We actively solicit your comments and suggestions. If you have questions or comments about the statutes, or if you have suggestions regarding index improvements, please write to us or call us toll-free at 1-800-833-9844; fax us toll free at 1-800-643-1280; E-mail us at customersupport@bender.com; or visit our website at <http://www.lexisnexis.com>. By providing us with your informed comments, you will be assured of having a working tool which increases in value each year.

LEXISNEXIS

June 2013

PREFACE TO THE 2001 EDITION

The 2001 Edition of the District of Columbia Official Code marks the eighth time that a compilation of the laws of the District of Columbia has been published by, or under the authority of, the government of the District of Columbia or that of the United States. The District of Columbia Code was first published in 1929; eleven years later, the Second Edition (1940) was published; another eleven years later, the Third Edition (1951); ten years later, the Fourth Edition (1961); six years later, the Fifth Edition (1967); another six years later, the Sixth Edition (1973); and 8 years later, the Seventh Edition (1981) was published. The time between the publication of the Seventh Edition and this Eighth Edition represents the longest period, by almost a decade, that the District of Columbia Code has gone unrevised in its 72 year history.

The District's Charter, which in 1973, established the current tripartite government of the District of Columbia, makes it incumbent upon the legislative branch to publish and codify every act of the Council, as the Council directs, upon becoming law, so that the residents of the District may have ready access to the laws by which they are governed. In 1973, however, the framers of the District's constitution could not have foreseen the incredible technological advances that would occur in the next 25 years nor the impact they have on the Code.

With the close of the 20th Century the world has witnessed the triumph of the Information Age, the rise of the World Wide Web, and the explosion of word processing and data storage technology. These phenomena have helped make the reproduction of legal text and data a fast, easy, and inexpensive enterprise, giving rise to a plethora of publishing mediums, and have made it a relatively simple task to reproduce existing legal text, including the District of Columbia Code. The rapid rise of the Computer Age has allowed virtually anyone with an ordinary personal computer to reproduce and compile the laws of the District of Columbia.

The laws of the District, however, are fluid, not stagnant, as they are amended several times each year. The quality and accuracy of publications not directed by the Council are beyond its control. The Council can only warrant the Code for which it has authorized publication. Therefore, in order to ensure that the residents of the District may distinguish between the compilation of District laws as produced under the direction of the elected officials of the District of Columbia and those of other persons, we have added the word "Official" to the title of the Code. Also to ensure that the Council never loses the right to publish its own laws, the government of the District of Columbia has retained the copyright to the District of Columbia Official Code.

The codified laws of the District of Columbia are created as a result of legislative action on the part of 13 individuals elected by the residents of the

District of Columbia to enact the laws that govern the District, and by the Congress. Once the legislative process is complete, the Council, through its delegation of authority to its Office of the General Counsel, codifies the laws in the form of this Code. In the process of codification, the Office of the General Counsel interprets any discrepancies in the drafting of the laws using commonly recognized rules of statutory construction. No other entity is authorized by law to make these determinations. As set forth by federal law and recognized by the Courts of the District of Columbia, this Code establishes *prima facie* evidence of the laws in force in the District of Columbia.¹ It is this continuity of authority, from enactment to codification to judicial review that gives this Code its authenticity and officiality as the content of the laws of the District of Columbia.

The 2001 Edition represents a recodification of the 1981 Edition in that it contains a reorganization of the presentation of the laws, inclusion of some previously omitted legal provisions, and the omission of non-substantive extraneous provisions. The theory behind the recodification is to purify the organization of the Code which over many decades has seen the haphazard mixing of original (“organic”) provisions of laws throughout the Code. In the 2001 Edition, we have established a system of codification that follows the legislative drafting principals established over many years in the Council’s Office of the General Counsel.

The recodification is not an overhaul of the Code. Although a cleanup of the antiquated, repealed and omitted provisions is long overdue, it is not the province of the Office of the General Counsel to determine which laws should be expunged as obsolete. Such decisions should be left to a working group commissioned by the Council to recommend revisions to the Code. The Office of the General Counsel has simply separated the organic laws into discrete divisions and topical categories. As much as is possible, we have followed a rule that requires that all organic law remain intact: closely following the layout of the originating act. We have retained notes to repealed sections to aid in legal research and preserved the numbering style that was first introduced in the Second Edition. Thanks to the resourcefulness of the publisher and the Council’s Office of the General Counsel staff, we have corrected provisions of law erroneously added to, or deleted from, prior editions.

The Code is organized into eight Divisions of practical law: government organization; judicial organization; decedent estates; criminal law; business law; education; property; and general laws. Each division is subdivided by subject matter called **Titles**, organic laws, called **Chapters** and **Subchapters**, and finally, individual **Sections** representing the individual sections of organic law. Occasionally, **Subtitles** are used to organize chapters of organic law, **Units** to organize subchapters, and **Parts** and **Subparts** to organize the additional divisions within the organic law. One important change that the user will notice, and hopefully appreciate, is that the District’s Charter, the Home Rule Act, is codified in its entirety in one location so that the

1. See 1 U.S.C. § 204(b) (1994); *Sheetz v. District of Columbia*, 629 A.2d 515, 519 (D.C. 1993).

framework of the current District government can be readily found. We hope that the organization of the 2001 Edition of the District of Columbia Official Code will serve as a foundation for further refinement by future law revision commissions or their equivalent.

The 2001 Edition has been prepared under the supervision of Benjamin. F. Bryant, Jr., Codification Counsel, Office of the General Counsel, Council of the District of Columbia.

_____/s/_____

Linda W. Cropp

Chairman

Council of the District of Columbia

_____/s/_____

Charlotte Brookins-Hudson

General Counsel

Council of the District of Columbia

USER'S GUIDE

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the District of Columbia Official Code, a User's Guide has been included in Volume 1 of the Code. This guide contains comments and information on the many features found within the District of Columbia Official Code intended to increase the usefulness of the Code to the user.

TITLES OF THE DISTRICT OF COLUMBIA OFFICIAL CODE, 2001 EDITION

DIVISION I. GOVERNMENT OF DISTRICT

Title

1. Government Organization.
2. Government Administration.
3. District of Columbia Boards and Commissions.
4. Public Care Systems.
5. Police, Firefighters, Medical Examiner, and Forensic Sciences.
6. Housing and Building Restrictions and Regulations.
7. Human Health Care and Safety.
8. Environmental and Animal Control and Protection.
9. Transportation Systems.
10. Parks, Public Buildings, Grounds and Space.

DIVISION II. JUDICIARY AND JUDICIAL PROCEDURE

- *11. Organization and Jurisdiction of the Courts.
- *12. Right to Remedy.
- *13. Procedure Generally.
- *14. Proof.
- *15. Judgments and Executions; Fees and Costs.
- *16. Particular Actions, Proceedings and Matters.
- *17. Review.

DIVISION III. DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

- *18. Wills.
- *19. Descent, Distribution, and Trusts.
- *20. Probate and Administration of Decedents' Estates.
- *21. Fiduciary Relations and Persons with Mental Illness.

DIVISION IV. CRIMINAL LAW AND PROCEDURE AND PRISONERS

22. Criminal Offenses and Penalties.
- *23. Criminal Procedure.
24. Prisoners and Their Treatment.

*Title has been enacted as law.

Title

DIVISION V. LOCAL BUSINESS AFFAIRS

- *25. Alcoholic Beverages.
- 26. Banks and Other Financial Institutions.
- 27. Civil Recovery by Merchants for Criminal Conduct.
- *28. Commercial Instruments and Transactions.
- *29. Business Organizations.
- 29A. Corporations [Repealed].
- 30. Hotels and Lodging Houses.
- 31. Insurance and Securities.
- 32. Labor.
- 33. Partnerships [Repealed].
- 34. Public Utilities.
- 35. Railroads and Other Carriers.
- 36. Trade Practices.
- 37. Weights, Measures, and Markets.

DIVISION VI. EDUCATION, LIBRARIES, AND PUBLIC INSTITUTIONS

- 38. Educational Institutions.
- 39. Libraries and Cultural Institutions.

DIVISION VII. PROPERTY

- 40. Liens.
- 41. Personal Property.
- 42. Real Property.

DIVISION VIII. GENERAL LAWS

- 43. Cemeteries and Crematories.
- 44. Charitable and Curative Institutions.
- 45. Compilation and Construction of Code.
- 46. Domestic Relations.
- *47. Taxation, Licensing, Permits, Assessments, and Fees.
- 48. Foods and Drugs.
- 49. Military.
- 50. Motor and Non-Motor Vehicles and Traffic.
- 51. Social Security.

*Title has been enacted as law.

CITE THIS BOOK

Thus: D.C. Official Code, § _____ (2001 Ed.)

Table of Contents

Title 11

Organization and Jurisdiction of the Courts

CHAPTER	PAGE
1. General Provisions	1
3. United States Court of Appeals for the District of Columbia Circuit	6
5. United States District Court for the District of Columbia	8
7. District of Columbia Court of Appeals	16
9. Superior Court of the District of Columbia	57
11. Family Court of the Superior Court	106
12. Tax Division of the Superior Court	115
13. Small Claims and Conciliation Branch of the Superior Court	117
15. Judges of the District of Columbia Courts	120
17. Administration of District of Columbia Courts	155
19. Juries and Jurors	180
21. Register of Wills	199
23. Medical Examiner [Repealed]	202
25. Attorneys	206
26. Representation of Indigents in Criminal Cases	299

Title 12

Right to Remedy

1. Abatement and Revivor	319
3. Limitation of Actions	329

Title 13

Procedure Generally

1. Rules of Procedure [Repealed]	465
3. Process and Parties	466
4. Civil Jurisdiction and Service Outside the District of Columbia	484
4A. Interstate Depositions and Discovery; Uniform Act	602
5. Counterclaims	605
7. Trial [Repealed]	607

Title 14

Proof

1. Evidence Generally; Depositions	609
3. Competency of Witnesses	634
5. Documentary Evidence	671

7. Absence for Seven Years 675

Title 15

Judgments and Executions; Fees and Costs

1. Judgments and Decrees 679

3. Enforcement of Judgments and Decrees 700

5. Exemptions and Trial of Right to Seized Property 722

7. Fees and Costs 731

9. Uniform Foreign-Money Claims 748

DIVISION II. JUDICIARY AND JUDICIAL PROCEDURE.

TITLE 11. ORGANIZATION AND JURISDICTION OF THE COURTS.

Chapter

1. General Provisions.
3. United States Court of Appeals for the District of Columbia Circuit.
5. United States District Court for the District of Columbia.
7. District of Columbia Court of Appeals.
9. Superior Court of the District of Columbia.
11. Family Court of the Superior Court.
12. Tax Division of the Superior Court.
13. Small Claims and Conciliation Branch of the Superior Court.
15. Judges of the District of Columbia Courts.
17. Administration of District of Columbia Courts.
19. Juries and Jurors.
21. Register of Wills.
23. Medical Examiner.
25. Attorneys.
26. Representation of Indigents in Criminal Cases.

CHAPTER 1. GENERAL PROVISIONS.

Sec.

- 11-101. Judicial power.
11-102. Status of District of Columbia Court of
Appeals.

§ 11-101. Judicial power.

The judicial power in the District of Columbia is vested in the following courts:

(1) The following Federal Courts established pursuant to article III of the Constitution:

- (A) The Supreme Court of the United States.
- (B) The United States Court of Appeals for the District of Columbia Circuit.

(C) The United States District Court for the District of Columbia.

(2) The following District of Columbia courts established pursuant to article I of the Constitution:

- (A) The District of Columbia Court of Appeals.
- (B) The Superior Court of the District of Columbia.

(July 29, 1970, 84 Stat. 475, Pub. L. 91-358, title I, § 111.)

Cross references. — Authority of Council to pass any act, resolution, or rule with respect to any provision of this title, limitations, see § 1-206.02.

District Charter provisions relating to judicial powers, see § 1-204.31.

Prior Codifications. — 1981 Ed., § 11-101. 1973 Ed., § 11-101.

Editor's notes. — Section 23(a) of D.C. Law 15-354 provided that Title 11 is designated Title 11 of the District of Columbia Official Code.

CASE NOTES

ANALYSIS

District of Columbia Court of Appeals.

In general.

Purpose.

Superior Court of the District of Columbia.

Validity.

District of Columbia Court of Appeals.

The United States District Court for the District of Columbia may certify cause to the Superior Court of the District of Columbia only if the District Court finds that the amount in controversy is not satisfied and that federal jurisdiction is not otherwise invoked. D.C. Code §§ 11-101 et seq., 11-922(b); 18 U.S.C. § 1331(a); Fed.Rules Civ.Proc. rule 56, 18 U.S.C. Apton v. Wilson, 506 F.2d 83, 1974 U.S. App. LEXIS 7184 (C.A.D.C. 1974).

Law of District of Columbia was comparable to state law in that it was authoritatively interpreted, at least at local level, not by United States courts but by District of Columbia Court of Appeals, and any decision by federal district court or United States Court of Appeals regarding local law would not be binding on District of Columbia Court of Appeals. 18 U.S.C. §§ 1331, 1332; D.C. Code § 11-101 et seq. United States Jaycees v. Superior Court of District of Columbia, 491 F. Supp. 579, 1980 U.S. Dist. LEXIS 11926 (1980).

Court of Appeals would not use its supervisory power over lower courts to require superior court to order the government to provide criminal defendant with unavailable declarant's grand jury testimony which might impeach excited utterance admitted at trial under hearsay exception; the criminal procedure rule requiring disclosure of a witness' prior statements applied only to witnesses who actually testified at trial, and under fundamental notions of judicial restraint, a change in the law would have to come from remedial legislation or a revision of the criminal procedure rule. Watkins v. United States, 846 A.2d 293, 2004 D.C. App. LEXIS 156 (2004).

The appellate court's supervisory power over lower courts does not provide the appellate court with a roving commission to right wrongs. Watkins v. United States, 846 A.2d 293, 2004 D.C. App. LEXIS 156 (2004).

Even a sensible and efficient use of the appellate court's supervisory power over lower courts is invalid if it conflicts with constitu-

tional or statutory provisions. Watkins v. United States, 846 A.2d 293, 2004 D.C. App. LEXIS 156 (2004).

Commonality of sovereignty of the District of Columbia and the United States lends support to, even if it does not settle, the argument that the Court of Appeals should follow current rather than former Supreme Court teaching. Davis v. Moore, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

District of Columbia Court Reform and Criminal Procedure Act of 1970 made District of Columbia Court of Appeals the final expositor of the local law of the District. D.C. Code § 11-101 et seq. Gillis v. United States, 400 A.2d 311, 1979 D.C. App. LEXIS 320 (1979).

The District of Columbia Court of Appeals, as the highest court of District of Columbia, is analogous to highest court of state in that District of Columbia Court of Appeals can exercise its own judgment on federal constitutional question until that question is answered by United States Supreme Court. D.C. Code §§ 11-101, 11-102, 11-1141. M. A. P. v. Ryan, 285 A.2d 310, 1971 D.C. App. LEXIS 256 (1971).

In general.

A court of the District of Columbia is a "state court" for purposes of statute providing that there is no appeal to the Court of Appeals from disposition of a habeas petition when the detention complained of arises out of process issued by a State court, unless a circuit justice or judge issues a certificate of appealability (COA). Madley v. United States Parole Comm'n, 278 F.3d 1306, 2002 U.S. App. LEXIS 968 (C.A.D.C. 2002), writ of certiorari denied by 537 U.S. 1004, 123 S. Ct. 515, 154 L. Ed. 2d 401, 2002 U.S. LEXIS 8137, 71 U.S.L.W. 3317 (2002).

Violations of the District of Columbia Code are violations of the United States Code and are all crimes against a single sovereign namely, the United States, and the District of Columbia Court Reform and Criminal Procedure Act did not vitiate the essential character of the District of Columbia as an arm of the sovereign United States. D.C. Code § 11-101 et seq. Goode v. Markley, 603 F.2d 973, 1979 U.S. App. LEXIS 13434 (C.A.D.C. 1979), writ of certiorari denied by 444 U.S. 1083, 100 S. Ct. 1039, 62 L. Ed. 2d 768, 1980 U.S. LEXIS 798 (1980).

Purpose.

Overriding intent of Congress in enacting the

District of Columbia Court Reform Act was to create a largely independent local court system. D.C. Code § 11-101 et seq. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

It was intention of Congress in enacting Court Reorganization Act to create in District of Columbia a court system designedly functioning like that in the 50 states, i.e., local system created to decide all cases of local significance and federal court system enabled finally to serve its proper role under Article III. D.C. Code §§ 11-101, 11-501, 11-504, 11-921(a)(5, 6), (a)(5)(A)(vii), (a)(5)(B), (b); U.S. Const. Art. 3, § 2, cl. 1. *Shutack v. Shutack*, 516 F. Supp. 219, 1981 U.S. Dist. LEXIS 12857 (1981).

Congress in creating local courts in District of Columbia intended them to be analogous to state courts, and federal courts of District of Columbia should depart from normal principles of comity only if unusual conditions existed. 18 U.S.C. §§ 1331, 1332; D.C. Code § 11-101 et seq. *United States Jaycees v. Superior Court of District of Columbia*, 491 F. Supp. 579, 1980 U.S. Dist. LEXIS 11926 (1980).

District of Columbia Court Reform and Criminal Procedure Act of 1970 is intended to transfer to the new local courts all those local judicial powers previously exercised by United States District Court for District of Columbia. D.C. Code § 11-101 et seq. *McIntosh v. Washington*, 395 A.2d 744, 1978 D.C. App. LEXIS 365 (1978).

Superior Court of the District of Columbia.

While the Superior Court of the District of

Columbia is a "federal court" in the sense it was created by Congress, it is not a federal court as defined by Congress in the District of Columbia Court Reform and Criminal Procedure Act. D.C. Code § 11-101(1); U.S. Const. art. 3, § 1 et seq. *Palmore v. Superior Court of District of Columbia*, 515 F.2d 1294, 1975 U.S. App. LEXIS 13797 (C.A.D.C. 1975), vacated by 429 U.S. 915, 97 S. Ct. 305, 50 L. Ed. 2d 280, 1976 U.S. LEXIS 3256 (1976).

Superior court, as constituted under District of Columbia Court Reform and Criminal Procedure Act, is not court of limited jurisdiction but court of general jurisdiction with power to adjudicate any civil action at law or in equity involving local laws; although the superior court is separated into number of divisions, such functional divisions do not delimit their power as tribunals of the superior court with general jurisdiction to adjudicate civil claims and disputes. D.C. Code §§ 11-101 et seq., 11-910, 11-921. *Andrade v. Jackson*, 401 A.2d 990, 1979 D.C. App. LEXIS 363 (1979).

Validity.

Congress did not violate article of Constitution pertaining to the judicial power of the United States by vesting jurisdiction over local felonies in the District of Columbia Superior Court. U.S. Const. art. 3, §§ 1, 2; D.C. Code §§ 11-101(2), 11-703, 11-721, 11-904, 11-1502, 11-1521. *Palmore v. United States*, 290 A.2d 573, 1972 D.C. App. LEXIS 379 (1972), affirmed by 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342, 1973 U.S. LEXIS 78 (1973).

§ 11-102. Status of District of Columbia Court of Appeals.

The highest court of the District of Columbia is the District of Columbia Court of Appeals. Final judgments and decrees of the District of Columbia Court of Appeals are reviewable by the Supreme Court of the United States in accordance with section 1257 of title 28, United States Code.

(July 29, 1970, 84 Stat. 475, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-102. 1973 Ed., § 11-102.

CASE NOTES

ANALYSIS

Binding nature of decisions.
Deference to District of Columbia Court of Appeals.
In general.
Purpose.

Binding nature of decisions.

Principles of federalism bind United States Court of Appeals for District of Columbia circuit

to follow District of Columbia Court of Appeals' interpretation of District of Columbia jurisdictional statute, and, though Court of Appeals is not literally bound by decisions of lower District of Columbia courts, it will give proper regard to pertinent lower court decisions in determining law of District of Columbia. D.C. Code §§ 11-102, 13-423. *Gatewood v. Fiat*, S. p. A., 617 F.2d 820, 1980 U.S. App. LEXIS 21116 (C.A.D.C. 1980).

District of Columbia Court of Appeals is bound by those decisions of the United States Court of Appeals for the District of Columbia Circuit rendered prior to February 1, 1971. D.C. Code 1981, §§ 11-102, 12-301. *Huntley v. Bortolussi*, 667 A.2d 1362, 1995 D.C. App. LEXIS 237 (1995).

Regardless of their fate at the hands of the United States Court of Appeals after February 1, 1971, effective date of Court Reorganization Act, decisions rendered by that court prior to such date remained valid and binding case law in the District of Columbia court system until such time as they may be modified or set aside by District of Columbia Court of Appeals. D.C. Code § 11-101 et seq. *Bethea v. U.S.*, 365 A.2d 64, 1976 D.C. App. LEXIS 374 (1976).

Superior Court of District of Columbia was not bound by decision of United States Court of Appeals, released subsequent to effective date of Court Reorganization Act, which abandoned an earlier decision and adopted a new standard for an insanity defense and the insanity standard formulated in such earlier decision remained the controlling rule for the District of Columbia court system prior to consideration of question by District of Columbia Court of Appeals. D.C. Code § 11-101 et seq. *Bethea v. U.S.*, 365 A.2d 64, 1976 D.C. App. LEXIS 374 (1976).

Superior Court of District of Columbia was not bound by concept of diminished responsibility announced in decision of United States Court of Appeals, released subsequent to effective date of Court Reorganization Act; thus, decision of Court of Appeals rendered prior to such date remained valid precedent on issue of admissibility of expert testimony concerning defendant's mens rea. D.C. Code § 11-101 et seq. *Bethea v. U.S.*, 365 A.2d 64, 1976 D.C. App. LEXIS 374 (1976).

Decision of the United States Court of Appeals for the District of Columbia where handed down after effective date of District of Columbia Court Reorganization and Criminal Procedure Act of 1970, was not binding on District of Columbia Courts. D.C. Code § 11-101 et seq. *United States v. Shorter*, 343 A.2d 569, 1975 D.C. App. LEXIS 237 (1975).

Opinion which interpreted District of Columbia Minimum Wage Act and which was published by United States Court of Appeals for the District of Columbia after effective date of Judicial Reorganization Act and at time when District of Columbia Court of Appeals had final authority to interpret a District of Columbia enactment did not constitute controlling precedent for the District of Columbia Court of Appeals, even though leave to appeal in the case had been granted prior to effective date of the Judicial Reorganization Act. D.C. Code §§ 11-102, 36-401 et seq. *District of Columbia*

v. Schwerman Trucking Co., 327 A.2d 818, 1974 D.C. App. LEXIS 301 (1974).

District of Columbia Court of Appeals is generally not bound by decisions of the United States Court of Appeals for the circuit rendered subsequent to the District of Columbia Court Reorganization Act of 1970; however, deference will be had to federal decision constituting a reasonable interpretation of federal legislation of nation-wide applicability, such as the Federal Youth Corrections Act. 18 U.S.C. §§ 5001 et seq., 5010(d); D.C. Code § 11-101 et seq. *Small v. United States*, 304 A.2d 641, 1973 D.C. App. LEXIS 283 (1973).

Where statute eliminated power of United States Court of Appeals to review judgments and decrees of District of Columbia Court of Appeals as of a certain date, subsequent decision of United States Court of Appeals was entitled to great respect but was not binding on District of Columbia Court of Appeals. D.C. Code §§ 11-102, 11-702, 11-705, 11-1141. *M. A. P. v. Ryan*, 285 A.2d 310, 1971 D.C. App. LEXIS 256 (1971).

Deference to District of Columbia Court of Appeals.

A federal court reviewing a defendant's conviction for an offense committed within the District of Columbia did not treat District of Columbia local statutes as if they were part of United States Code, but deferred to the District of Columbia Court of Appeals on questions of statutory interpretation, as if they were rendered by the highest court of the state on questions of state law. D.C. Code 1981, § 11-102. *United States v. Edmond*, 924 F.2d 261, 1991 U.S. App. LEXIS 805 (C.A.D.C. 1991), writ of certiorari denied by 502 U.S. 838, 112 S. Ct. 125, 116 L. Ed. 2d 92, 1991 U.S. LEXIS 5639, 60 U.S.L.W. 3260 (1991).

Greatest deference to decisions of District of Columbia Court of Appeals in construing a statute relating to jurisdiction of the United States Court of Appeals is not appropriate. D.C. Code § 11-102. *McCall v. Swain*, 510 F.2d 167, 1975 U.S. App. LEXIS 15565 (C.A.D.C. 1975).

A federal district court sitting as a local court in the District of Columbia should defer to the District of Columbia Court of Appeals' interpretation of local statutes, at least where federal statutory or constitutional issues are not involved. D.C. Code § 11-101 et seq. *M. A. S., Inc. v. Van Curler Broadcasting Corp.*, 357 F. Supp. 686, 1973 U.S. Dist. LEXIS 14061 (1973).

United States District Court for the District of Columbia would not blindly follow decision of District of Columbia Court of Appeals when confronted with factors which were not considered in opinion of District of Columbia Court of Appeals and which, if they had been considered, probably would have produced a contrary result. D.C. Code § 11-101 et seq. *M. A. S., Inc.*

v. Van Curler Broadcasting Corp., 357 F. Supp. 686, 1973 U.S. Dist. LEXIS 14061 (1973).

United States District Court for District of Columbia would not follow decision of the District of Columbia Court of Appeals where, in view of factors not considered in opinion of District of Columbia Court of Appeals, it appeared that the District of Columbia Court of Appeals itself would not follow that decision. D.C. Code § 11-101 et seq. M. A. S., Inc. v. Van Curler Broadcasting Corp., 357 F. Supp. 686, 1973 U.S. Dist. LEXIS 14061 (1973).

Policy underlying District of Columbia Court Reorganization Act of 1970 requires greatest deference to decisions of the District of Columbia Court of Appeals. D.C. Code § 11-101 et seq. M. A. S., Inc. v. Van Curler Broadcasting Corp., 357 F. Supp. 686, 1973 U.S. Dist. LEXIS 14061 (1973).

As a matter of judicial policy, the Supreme Court ordinarily defers to the decisions of the Court of Appeals on matters of District of Columbia law. Davis v. Moore, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

In general.

When interpreting the common law of the District of Columbia, Court of Appeals follows the decisions of the District of Columbia Court of Appeals, which is, for Erie doctrine purposes, treated as if it were the highest court of the state. D.C. Code 1981, § 11-102. Rogers v. Ingersoll-Rand Co., 144 F.3d 841, 1998 U.S. App. LEXIS 11586 (C.A.D.C. 1998).

District of Columbia Court of Appeals, and not federal Court of Appeals for District of

Columbia Circuit, is now the final expositor of local law. 18 U.S.C. § 1257; D.C. Code §§ 11-102, 11-301, 11-501 to 11-503, 11-921, 11-923. Thompson v. United States, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

Following adoption of District of Columbia Court Reform and Criminal Procedure Act of 1970, the United States Court of Appeals for the District of Columbia is no longer the final expositor of the local law of the District. D.C. Code § 11-102. United States v. Peterson, 483 F.2d 1222, 1973 U.S. App. LEXIS 9082 (C.A.D.C. 1973), writ of certiorari denied by 414 U.S. 1007, 94 S. Ct. 367, 38 L. Ed. 2d 244, 1973 U.S. LEXIS 1290 (1973).

The District of Columbia Court of Appeals, as the highest court of District of Columbia, is analogous to highest court of state in that District of Columbia Court of Appeals can exercise its own judgment on federal constitutional question until that question is answered by United States Supreme Court. D.C. Code §§ 11-101, 11-102, 11-1141. M. A. P. v. Ryan, 285 A.2d 310, 1971 D.C. App. LEXIS 256 (1971).

Purpose.

Overarching congressional intent was that courts in District of Columbia be reconstituted into separate and independent systems, one local, and the other federal and freed of its local jurisdiction. D.C. Code §§ 11-102, 11-301, 11-301(1), 11-501 to 11-503, 11-921, 11-923; 18 U.S.C. § 1257. Thompson v. United States, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

CHAPTER 3. UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Sec.
11-301. Jurisdiction of appeals from the Dis-

trict of Columbia Court of Ap-
peals.

§ 11-301. Jurisdiction of appeals from the District of Columbia Court of Appeals.

In addition to its jurisdiction as a United States court of appeals and any other jurisdiction conferred on it by law, the United States Court of Appeals for the District of Columbia Circuit has jurisdiction of appeals from judgments of the District of Columbia Court of Appeals —

(1) with respect to violations of criminal laws of the United States which are not applicable exclusively to the District of Columbia if a petition for the allowance of an appeal from that judgment is filed within ten days after its entry; or

(2) entered before the effective date of the District of Columbia Court Reorganization Act of 1970 in any other case if a petition for the allowance of an appeal from that judgment is filed within ten days after its entry.

(July 29, 1970, 84 Stat. 476, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-301.
1973 Ed., § 11-301.

References in text. — “The effective date of the District of Columbia Court Reorganization

Act of 1970,” referred to in paragraph (2) of this section, means, as set forth in § 199(c) of the Act, the first day of the seventh calendar month which began after the enactment of the Act.

CASE NOTES

ANALYSIS

In general.
Purpose.

In general.

Congress provided for gradual conversion of local jurisdiction of district and superior courts of District of Columbia so as to avoid risk not only of substantial dislocation but also of prejudice to those already litigating in what was to become exclusively “local” system. D.C. Code §§ 11-102, 11-301, 11-501 to 11-503, 11-921, 11-923; 18 U.S.C. § 1257. *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

District of Columbia Court of Appeals, and not federal Court of Appeals for District of Columbia Circuit, is now the final expositor of local law. 18 U.S.C. § 1257; D.C. Code §§ 11-102, 11-301, 11-501 to 11-503, 11-921, 11-923. *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

Effect of statute providing that United States Court of Appeals for District of Columbia Circuit should have jurisdiction of appeals from judgments of District of Columbia Court of

Appeals entered before effective date of District of Columbia Court Reorganization Act of 1970 “in any other case. . .” was to allow Court of Appeals to entertain petition for review of any judgment of District of Columbia Court of Appeals entered before February 1, 1971, and it was transitional in nature. D.C. Code § 11-301(2). *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

Statute providing that United States Court of Appeals for District of Columbia Circuit has jurisdiction of appeals from judgments of District of Columbia Court of Appeals “with respect to violations of criminal laws of the United States which are not applicable exclusively to the District of Columbia. . .” or “entered before the effective date of the District of Columbia Court Reorganization Act of 1970 in any other case. . .” preserved jurisdiction of United States Court of Appeals for District of Columbia over appeals from District of Columbia Court of Appeals which were pending or might still be held on effective date of Act or which involved federal misdemeanors tried in District of Columbia Court. D.C. Code § 11-

301(1, 2). *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

Statute now permits Court of Appeals to review decisions of District of Columbia Court of Appeals only in cases involving federal offenses tried in superior court. D.C. Code § 11-301(1, 2). *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

Purpose.

Overarching congressional intent was that

courts in District of Columbia be reconstituted into separate and independent systems, one local, and the other federal and freed of its local jurisdiction. D.C. Code §§ 11-102, 11-301, 11-301(1), 11-501 to 11-503, 11-921, 11-923; 18 U.S.C. § 1257. *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

CHAPTER 5. UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

Subchapter I. Jurisdiction

Sec.

Subchapter II. Auditor

Sec.

11-501. Civil jurisdiction.

11-502. Criminal jurisdiction.

11-503. Removal of cases from the Superior Court of the District of Columbia.

11-521. Appointment of Auditor.

Subchapter I. Jurisdiction.

§ 11-501. Civil jurisdiction.

In addition to its jurisdiction as a United States district court and any other jurisdiction conferred on it by law, the United States District Court for the District of Columbia has jurisdiction of the following:

(1) Any civil action or other matter begun in the court before the effective date of the District of Columbia Court Reorganization Act of 1970 other than any matter over which the Superior Court of the District of Columbia takes jurisdiction under section 11-921(a)(4)(G) or 11-921(a)(5)(B).

(2) During the eighteen-month period beginning on such effective date, any civil action or other matter which is brought under —

(A) Chapter 3 of Title 21 (relating to gifts to minors);

(B) Chapter 5 of Title 21 (relating to hospitalization of the mentally ill);

(C) Chapter 7 of Title 21 (relating to property of the mentally ill);

(D) Chapter 11 of Title 21 (relating to commitment and maintenance of substantially retarded persons);

(E) Chapter 13 of Title 21 (relating to appointment of committees for alcoholics and addicts) [repealed]; or

(F) Chapter 15 of Title 21 (relating to appointment of conservators) [repealed].

(3) During the thirty-month period beginning on such effective date, any civil action or other matter —

(A) which is brought under Chapter 29 of Title 16 (relating to partition and assignment of dower);

(B) which would have been within the jurisdiction of the Orphans Court of Washington County, District of Columbia, before June 21, 1870;

(C) relating to the execution or validity of wills devising real property within the District of Columbia, and of wills and testaments properly presented for probate in the United States District Court for the District of Columbia, and the admission to probate and recording of those wills;

(D) relating to the proof of wills of either personal or real property and the revocation of probate of wills for cause;

(E) involving the granting and revocation for cause of letters testamentary, letters of administration, letters ad colligendum and letters of guardianship, and the appointment of successors to persons whose letters have been revoked;

(F) involving the hearing, examination, and issuance of decrees upon accounts, claims, and demands existing between executors or administrators and legatees or persons entitled to a distributive share of an intestate estate, or between wards and their guardians;

(G) involving the enforcement of the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to the court;

(H) involving the enforcement of distribution of estates by executors and administrators and the payment or delivery by guardians of money or property belonging to their wards; or

(I) otherwise within the probate jurisdiction of the court on the day before such effective date.

(4) Any civil action (other than a matter over which the Superior Court of the District of Columbia has jurisdiction under paragraph (3) or (4) of section 11-921(a)) begun in the court during the thirty-month period beginning on such effective date wherein the amount in controversy exceeds \$50,000.

(July 29, 1970, 84 Stat. 476, Pub. L. 91-358, title I, § 111.)

Cross references. — Claims against the District, definition of court, see § 2-411.

Section references. — This section is referred to in §§ 2-411, 11-921, and 16-601.

Prior Codifications. — 1981 Ed., § 11-501. 1973 Ed., § 11-501.

References in text. — “The effective date of the District of Columbia Court Reorganization Act of 1970,” referred to in this section, means, as set forth in § 199(c) of the Act, the first day of the seventh calendar month which began after the enactment of the Act.

“Chapter 7 of title 21”, referred to in paragraph 2(C), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

“Chapter 13 of title 21”, referred to in paragraph 2(E), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

“Chapter 15 of title 21”, referred to in paragraph 2(F), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

CASE NOTES

ANALYSIS

Civil action.

In general.

Purpose.

Civil action.

Phrase “civil action” as used in provision of Reorganization Act withholding from new local courts civil actions begun during 30-month transition period wherein amount in controversy exceeds \$50,000 should be given same meaning that it has under Federal Rules of Civil Procedure and should be interpreted as including third-party practice generated in the natural course of \$50,000-plus suits. Fed.Rules Civ.Proc. rule 14, 18 U.S.C.; D.C. Code § 11-501(4). *Rieser v. District of Columbia*, 580 F.2d 647, 1978 U.S. App. LEXIS 11361 (C.A.D.C. 1978).

In general.

In light of broad brush used in designing the Reorganization Act, there is no reason to as-

sume that Congress intended to impose jurisdictional barriers on tendency of modern civil procedure to require plaintiff to try his whole case at one time; contrary intent must be inferred. U.S. Const. art. 1, § 8, cl. 17; D.C. Code § 11-501. *Rieser v. District of Columbia*, 580 F.2d 647, 1978 U.S. App. LEXIS 11361 (C.A.D.C. 1978).

Where Pennsylvania resident brought negligence action against District of Columbia residents during 30-month transition period of Reorganization Act and filed separate negligence pleading arising out of same events against District of Columbia after transition period but, by accompanying complaint with notice of related cases and motion to consolidate which was granted, accomplished same objective as third-party complaint, federal district court had jurisdiction over claims against District pursuant to section of Reorganization Act withholding from new local courts civil actions begun during 30-month transition period. D.C. Code § 11-501(4); Fed.Rules Civ.Proc. rules

14(a), 42(a), 18 U.S.C. *Rieser v. District of Columbia*, 580 F.2d 647, 1978 U.S. App. LEXIS 11361 (C.A.D.C. 1978).

District of Columbia Court of Appeals, and not federal Court of Appeals for District of Columbia Circuit, is now the final expositor of local law. 18 U.S.C. § 1257; D.C. Code §§ 11-102, 11-301, 11-501 to 11-503, 11-921, 11-923. *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

The clearly expressed objectives of Congress in its enactment of the District of Columbia Court Reform and Criminal Procedure Act of 1970, to relieve the federal courts of the District of matters more suitable for resolution in the local courts, must take precedence over whatever was the historical practice prior to the enactment. D.C. Code 1981, § 11-921(a)(5)(A)(vii). In *re Estate of Shutack*, 469 A.2d 427, 1983 D.C. App. LEXIS 521 (1983).

To achieve the gradual transfer of all matters of a local nature away from the federal to the local court, the District of Columbia Court Reform and Criminal Procedure Act of 1970 provided for transition periods during which the United States District Court for the District of Columbia had temporary jurisdiction over certain matters and after which the matters were within the exclusive jurisdiction of the superior court of the District of Columbia. D.C. Code 1981, § 11-921(a)(5)(B), (b), (b)(2). In *re Estate of Shutack*, 469 A.2d 427, 1983 D.C. App. LEXIS 521 (1983).

The District of Columbia Court Reorganization Act of 1970 did not vest in the Superior Court trust cases in existence before the effective date of the Act, nor vest any jurisdiction at all in the Probate Division of Superior Court over trust cases. *Chumbris v. Chaconas*, 110 WLR 1521 (Super. Ct. 1982).

Purpose.

Congress provided for gradual conversion of

local jurisdiction of district and superior courts of District of Columbia so as to avoid risk not only of substantial dislocation but also of prejudice to those already litigating in what was to become exclusively "local" system. D.C. Code §§ 11-102, 11-301, 11-501 to 11-503, 11-921, 11-923; 18 U.S.C. § 1257. *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

Overarching congressional intent was that courts in District of Columbia be reconstituted into separate and independent systems, one local, and the other federal and freed of its local jurisdiction. D.C. Code §§ 11-102, 11-301, 11-301(1), 11-501 to 11-503, 11-921, 11-923; 18 U.S.C. § 1257. *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

It was intention of Congress in enacting Court Reorganization Act to create in District of Columbia a court system designedly functioning like that in the 50 states, i.e., local system created to decide all cases of local significance and federal court system enabled finally to serve its proper role under Article III. D.C. Code §§ 11-101, 11-501, 11-504, 11-921(a)(5), 6), (a)(5)(A)(vii), (a)(5)(B), (b); U.S. Const. Art. 3, § 2, cl. 1. *Shutack v. Shutack*, 516 F. Supp. 219, 1981 U.S. Dist. LEXIS 12857 (1981).

Under District of Columbia ejectment statute as amended by 1970 Court Reform Act, District Court does not have original jurisdiction over ejectment proceedings brought by the United States; intent of Court Reform Act was to vest exclusive jurisdiction of all ejectment proceedings in Superior Court, even those brought by the United States. 18 U.S.C. §§ 1345, 1441, 1441(a), 1446(d), 1447(c); D.C. Code §§ 5-103 et seq., 11-503, 45-910. *Herian v. United States*, 363 F. Supp. 287, 1973 U.S. Dist. LEXIS 12782 (1973).

§ 11-502. Criminal jurisdiction.

In addition to its jurisdiction as a United States district court and any other jurisdiction conferred on it by law, the United States District Court for the District of Columbia has jurisdiction of the following:

(1) Any criminal case begun in the court by the return of an indictment or the filing of an information before the effective date of the District of Columbia Court Reorganization Act of 1970.

(2) Any criminal case which is begun in the court by the return of an indictment or the filing of an information during the eighteen-month period beginning on such effective date and which —

(A) involves a violation of any one of the following sections of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901:

- (i) section 809 (D.C. Official Code, sec. 22-101) [repealed] (relating to abortion),
- (ii) section 803 (D.C. Official Code, sec. 22-401) (relating to assault with intent to kill, rob, rape, or poison),
- (iii) section 823(a) (D.C. Code, sec. 22-801(a)) (relating to burglary in the first degree),
- (iv) section 812 (D.C. Official Code, sec. 22-2001) (relating to kidnapping),
- (v) sections 798 through 802 (D.C. Official Code, secs. 22-2101 through 22-2105) (relating to murder and manslaughter),
- (vi) section 808 (D.C. Official Code, sec. 22-4801 [repealed]) (relating to rape),
- (vii) section 810 (D.C. Official Code, sec. 22-2801) (relating to robbery); or

(B) involves any other offense under any law applicable exclusively to the District of Columbia which offense is joined in such information or indictment with any of the offenses listed in subparagraph (A).

(3) Any offense under any law applicable exclusively to the District of Columbia which offense is joined in the same information or indictment with any Federal offense.

(July 29, 1970, 84 Stat. 477, Pub. L. 91-358, title I, § 111.)

Section references. — This section is referred to in §§ 11-923 and 23-311.

Prior Codifications. — 1981 Ed., § 11-502. 1973 Ed., § 11-502.

References in text. — “The effective date of the District of Columbia Court Reorganization

Act of 1970,” referred to in paragraphs (1) and (2) of this section, means, as set forth in § 199(c) of the Act, the first day of the seventh calendar month which began after the enactment of the Act.

CASE NOTES

ANALYSIS

Divestiture of federal jurisdiction.

In general.

Joinder of Federal and District offenses.

Orders of abatement.

Transition period.

Divestiture of federal jurisdiction.

Federal district court for District of Columbia did not abuse its discretion by failing to divest itself of jurisdiction over prosecution of defendants for local burglary offenses, notwithstanding that defendants, who had also been indicted for federal offenses of conspiracy, interception of oral communications, and theft of government documents, had been extradited for trial only for local burglary offenses, where violations of District of Columbia Code for which defendants were tried, i.e., illegally entering United States government offices with intent to steal property owned by United States, were offenses against United States, prosecuted in name of United States, and were of unique

concern to United States. D.C. Code 1981, §§ 11-502(3), 22-1801(b); 18 U.S.C. §§ 371, 641, 2511(1)(a). *United States v. Kember*, 685 F.2d 451, 1982 U.S. App. LEXIS 21250 (C.A.D.C. 1982), writ of certiorari denied by 459 U.S. 832, 103 S. Ct. 73, 74 L. Ed. 2d 72, 1982 U.S. LEXIS 3180, 51 U.S.L.W. 3254 (1982).

Federal court must dismiss criminal prosecution when federal charges have faded from case prior to trial, leaving only District of Columbia offenses for adjudication, unless court determines, in its discretion, that retention of case is warranted by remaining matters of legitimate federal concern. D.C. Code 1981, §§ 11-502(3), 22-1801(b); 18 U.S.C. §§ 371, 2511(1)(a). *United States v. Kember*, 685 F.2d 451, 1982 U.S. App. LEXIS 21250 (C.A.D.C. 1982), writ of certiorari denied by 459 U.S. 832, 103 S. Ct. 73, 74 L. Ed. 2d 72, 1982 U.S. LEXIS 3180, 51 U.S.L.W. 3254 (1982).

Where case was on eve of trial when federal counts in arson prosecution were dismissed for lack of federal jurisdiction, it would be abuse of discretion to dismiss pendent counts under

District of Columbia law. D.C. Code 1981, § 11-502(3). *United States v. Montgomery*, 815 F. Supp. 7, 1993 U.S. Dist. LEXIS 2238 (1993).

Federal district court for District of Columbia had jurisdiction over District of Columbia offense which was properly and not impermissibly joined in same information with federal offenses, and fact that treaty provisions under which defendants were extradited from England prevented them from being tried on any of the federal counts did not strip district court of jurisdiction. D.C. Code §§ 11-502, 11-502(3); Fed.R.Cr.Proc. Rules 8, 14, 18 U.S.C. *United States v. Kember*, 487 F. Supp. 1340, 1980 U.S. Dist. LEXIS 11297 (1980).

In general.

Court Reform Act attempted to eliminate certain jurisdictional anomalies as well as substantial grants of concurrent jurisdiction by assimilating jurisdiction of district court and Court of Appeals to that of their federal counterparts elsewhere and by endowing superior court and District of Columbia Court of Appeals with powers similar to those of state courts. D.C. Code §§ 11-502, 11-721, 11-923. *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

D.C. Code 1981, § 11-502(3), conferring jurisdiction on federal district court for the District of Columbia for certain offenses, has no effect upon federal districts courts in other jurisdictions, which are empowered under 18 U.S.C. § 3231, to try all offenses against laws of United States. *United States v. Benjamin*, 623 F. Supp. 1204, 1985 U.S. Dist. LEXIS 12442 (1985).

Joinder of Federal and District offenses.

When an indictment contains both District of Columbia and federal charges, the district court may adjudicate the entire case. D.C. Code 1981, § 11-502(3). *United States v. McLaughlin*, 164 F.3d 1, 1998 U.S. App. LEXIS 31488 (C.A.D.C. 1998), writ of certiorari denied by 526 U.S. 1079, 119 S. Ct. 1485, 143 L. Ed. 2d 567, 1999 U.S. LEXIS 2792, 67 U.S.L.W. 3642 (1999).

To be properly joined in federal indictment, offenses charged under District of Columbia law and federal law must be of the same or similar character or based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan. Fed.Rules Cr.Proc. Rule 8(a), 18 U.S.C. *United States v. Richardson*, 161 F.3d 728, 1998 U.S. App. LEXIS 27464 (C.A.D.C. 1998).

Where indictment or information couples District of Columbia and federal charges, federal district court may adjudicate entire case. D.C. Code 1981, § 11-502(3). *United States v. Wade*, 152 F.3d 969, 1998 U.S. App. LEXIS

20492 (C.A.D.C. 1998), appeal dismissed by 1998 U.S. App. LEXIS 33921 (D.C. Cir. Dec. 4, 1998).

Under statute, joinder of codefendant with defendant who was charged with several violations of federal statutes was sufficient to confer jurisdiction on district court over codefendant's nonfederal offense of aiding and abetting defendant's possession of unregistered firearm. D.C. Code 1981, § 11-502(3). *United States v. Johnson*, 46 F.3d 1166, 1995 U.S. App. LEXIS 2209 (C.A.D.C. 1995), remanded without opinion by 172 F.3d 921, 335 U.S. App. D.C. 320, 1998 U.S. App. LEXIS 38391 (1998).

Where Government had originally charged defendant with violating federal law but then had obtained superseding information charging him only with violating local District of Columbia law, federal district court could not retain jurisdiction on theory that the local District of Columbia law represented lesser included offenses of the federal law or that court could exercise discretion as to whether to retain jurisdiction over a local offense on the basis of the original federal charges. *United States v. Koritko*, 870 F.2d 738, 1989 U.S. App. LEXIS 3917 (C.A.D.C. 1989).

So long as indictment properly joins federal and local offenses under federal rule of criminal procedure, Congress intended to give federal court power to try local offense; however, determination whether to exercise power was discretionary. D.C. Code § 11-502(3); Fed.R.Cr.Proc. Rule 8, 18 U.S.C. *United States v. Kember*, 648 F.2d 1354, 1980 U.S. App. LEXIS 12061 (C.A.D.C. 1980).

Where federal and local District of Columbia offenses were properly joined in original indictment, district court had power to try defendants for local offenses before the court and court had power to compel their testimony and cite them for contempt. D.C. Code § 11-502(3); Fed.R.Cr.Proc. Rule 8, 18 U.S.C. *United States v. Kember*, 648 F.2d 1354, 1980 U.S. App. LEXIS 12061 (C.A.D.C. 1980).

The word "joined" in statute providing that the United States District Court for the District of Columbia has jurisdiction of any offense under any law applicable exclusively to the District of Columbia which offense is joined in the same information or indictment with any federal offense means properly joined under criminal rule governing joinder of offenses and defendants. D.C. Code § 11-502(3); Fed.Rules Crim.Proc. rule 8, 18 U.S.C. *United States v. Jackson*, 562 F.2d 789, 1977 U.S. App. LEXIS 12056 (C.A.D.C. 1977).

In absence of specific federal statute superseding prosecution in District of Columbia on local offenses, defendant whose acts constitute violations of both federal and District of Columbia law can properly be subject of single trial in federal district court under joint indictment;

only constraint on such prosecution is that where federal and local offenses are identical or where one would be lesser included offense of other, defendant may ultimately be sentenced under only one statutory scheme. D.C. Code § 11-502(3). *United States v. Jones*, 527 F.2d 817, 1975 U.S. App. LEXIS 11337 (C.A.D.C. 1975).

Where, although defendants were prosecuted in single proceeding in federal district court both for possession of heroin with intent to distribute in violation of Comprehensive Drug Abuse Prevention and Control Act of 1970 and for possession of heroin in violation of District of Columbia law, they were convicted and sentenced only under District of Columbia statute, there was no impermissible joinder of judgments. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401(a), 21 U.S.C. § 841(a); D.C. Code §§ 11-502(3), 33-402. *United States v. Jones*, 527 F.2d 817, 1975 U.S. App. LEXIS 11337 (C.A.D.C. 1975).

Where federal and District of Columbia offenses have been properly joined in one indictment and jeopardy has attached, the district court may proceed to a determination of the local offenses regardless of any intervening disposition of the federal counts. D.C. Code §§ 11-501 et seq., 11-502(3). *United States v. Shepard*, 515 F.2d 1324, 1975 U.S. App. LEXIS 13657 (C.A.D.C. 1975).

District Court for the District of Columbia had jurisdiction to prosecute defendant for District of Columbia charges for violations of protective orders which had occurred two weeks before incident which gave rise to federal charge of unlawful possession of firearm while under a protective order; close proximity in time combined with nature of alleged conduct giving rise to local charges was sufficient nexus to provide jurisdiction. 18 U.S.C. § 922(g)(8); Fed.R.Cr.Proc. Rule 8, 18 U.S.C.; D.C. Code 1981, § 11-502(3). *United States v. Drew*, 5 F.Supp.2d 16, 1998 U.S. Dist. LEXIS 7495 (1998).

United States District Court for the District of Columbia possesses jurisdiction over charges of local offenses only if offense is joined in same information or indictment with any federal offense. D.C. Code 1981, § 11-502(3). *United States v. Edmond*, 738 F. Supp. 572, 1990 U.S. Dist. LEXIS 6623 (1990), dismissed in part by 1990 U.S. Dist. LEXIS 7001 (D.D.C. June 7, 1990).

When D.C. Code offenses are properly joined with federal offenses, jurisdiction of United States District Court for the District of Columbia over D.C. Code offenses does not evaporate once federal offenses fade out of the picture; instead, court must determine whether continued jurisdiction over D.C. Code offenses would promote a federal interest or judicial economy and litigational convenience. D.C. Code 1981,

§ 11-502(3). *United States v. Edmond*, 738 F. Supp. 572, 1990 U.S. Dist. LEXIS 6623 (1990), dismissed in part by 1990 U.S. Dist. LEXIS 7001 (D.D.C. June 7, 1990).

Orders of abatement.

Assuming District of Columbia abatement statute was properly invoked, abatement order was within federal district court's jurisdiction, despite defendants' contention that order of abatement was form of equitable relief that fell within exclusive jurisdiction of District of Columbia Superior Court; order was entered as part of criminal judgment in which defendants pled guilty to keeping a disorderly house, along with federal drug charges, and penalty imposed by abatement statute was mandatory, given language stating that order of abatement "shall be entered" as part of any judgment in any criminal proceeding establishing predicate nuisance. D.C. Code 1981, §§ 11-502(3), 11-921(a)(3, 5), 22-2717, 22-2722. *United States v. Wade*, 152 F.3d 969, 1998 U.S. App. LEXIS 20492 (C.A.D.C. 1998), appeal dismissed by 1998 U.S. App. LEXIS 33921 (D.C. Cir. Dec. 4, 1998).

Federal district court had subject matter jurisdiction, after defendants in criminal case involving federal charges pled guilty to keeping disorderly house in violation of District of Columbia law, to issue order of abatement with regard to house at issue pursuant to District of Columbia statute. D.C. Code 1981, §§ 11-502(3), 22-2717, 22-2722. *United States v. Wade*, 992 F. Supp. 6, 1997 U.S. Dist. LEXIS 21496 (1997), vacated by 152 F.3d 969, 332 U.S. App. D.C. 20, 1998 U.S. App. LEXIS 20492 (1998).

Transition period.

Phrase "civil action" as used in provision of Reorganization Act withholding from new local courts civil actions begun during 30-month transition period wherein amount in controversy exceeds \$50,000 should be given same meaning that it has under Federal Rules of Civil Procedure and should be interpreted as including third-party practice generated in the natural course of \$50,000-plus suits. Fed.Rules Civ.Proc. rule 14, 18 U.S.C.; D.C. Code § 11-501(4). *Rieser v. District of Columbia*, 580 F.2d 647, 1978 U.S. App. LEXIS 11361 (C.A.D.C. 1978).

District of Columbia Court Reform Act's requirement that evidence of certain types of prior crimes be admitted for impeachment purposes applies to trials of District of Columbia Code offenses conducted in United States district court during transition period established by Code. D.C. Code §§ 11-502(2), 14-305. *United States v. Yates*, 524 F.2d 1282, 1975 U.S. App. LEXIS 12018 (C.A.D.C. 1975).

District of Columbia statute providing for mandatory admission of witness impeachment by conviction applies to trial in United States District Court for District of Columbia of District of Columbia Code indictments returned

before August 1, 1972. D.C. Code §§ 11-502, 14-305; U.S. Const. art. 1, § 8, cl. 17; Amends. 5, 6. *United States v. Belt*, 514 F.2d 837, 1975 U.S. App. LEXIS 14203 (C.A.D.C. 1975).

§ 11-503. Removal of cases from the Superior Court of the District of Columbia.

A civil action or criminal prosecution in the Superior Court of the District of Columbia is removable to the United States District Court for the District of Columbia in accordance with chapter 89 of title 28, United States Code.

(July 29, 1970, 84 Stat. 478, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-503. 1973 Ed., § 11-503.

CASE NOTES

ANALYSIS

Failure to meet jurisdictional requirements.
In general.
Necessity of removal.

Failure to meet jurisdictional requirements.

Claims of plaintiff, who did not seek compensation for any specific injury to his person or to his property, but rather sought compensation only for certain highly intangible items which fell within realm of "emotional injuries," for damages in amount of \$800,000 on theories of assault, false imprisonment, false arrest and malicious prosecution based on altercation between parties concerning plaintiff's smoking in office building elevator, would at most support only nominal recovery far less than requisite jurisdictional amount of \$10,000, any larger verdict being excessive, and consequently, action, which had been removed to federal district court on basis of diversity of citizenship, would be remanded to the superior court of the District of Columbia. 18 U.S.C. §§ 1332, 1441(a). *Davis v. Licari*, 434 F. Supp. 23, 1977 U.S. Dist. LEXIS 15470 (1977).

In general.

Where partnership was not suable as entity in District of Columbia, where there was complete diversity of citizenship between plaintiff on one hand and defendant partners on the other and where amount in controversy, exclusive of interest and costs, exceeded \$10,000 and the action was one which originally could have been brought in district court, it was properly removable thereto. 18 U.S.C. §§ 1332(a), 1441(a); D.C. Code § 13-421. *Day v. Avery*, 548 F.2d 1018, 1976 U.S. App. LEXIS 6316 (C.A.D.C. 1976), writ of certiorari denied by 431

U.S. 908, 97 S. Ct. 1706, 52 L. Ed. 2d 394, 1977 U.S. LEXIS 1736 (1977).

Although parties had not questioned propriety of removal of case from Superior Court of District of Columbia, it was nonetheless district court's responsibility to determine that removal was proper. *Papadopoulos v. Sheraton Park Hotel*, 410 F. Supp. 217, 1976 U.S. Dist. LEXIS 16317 (1976).

Claim that collective bargaining agreement between defendant hotel-employer and union representing employees had been breached stated claim of right arising under federal law and thus removal of such action from Superior Court of the District of Columbia to district court was proper with counts alleging breach of District of Columbia statutes coming within district court's pendent jurisdiction. Labor Management Relations Act, 1947, §§ 301, 301(a), 29 U.S.C. §§ 185, 185(a); 18 U.S.C. § 1441(b); D.C. Code §§ 36-415, 36-601 et seq. *Papadopoulos v. Sheraton Park Hotel*, 410 F. Supp. 217, 1976 U.S. Dist. LEXIS 16317 (1976).

In order to find that action brought alleging, inter alia, breach of collective bargaining agreement had been properly removed from Superior Court of the District of Columbia, district court had to find that right, which plaintiffs sought to vindicate and which was alleged by defendant to form basis for federal jurisdiction, was right guaranteed by federal law. 18 U.S.C. § 1441(b). *Papadopoulos v. Sheraton Park Hotel*, 410 F. Supp. 217, 1976 U.S. Dist. LEXIS 16317 (1976).

District of Columbia statute providing that every materialman suit should be brought in Superior Court of District of Columbia did not deprive district court of diversity jurisdiction in such cases nor render such cases nonremovable once they were brought in Superior Court of District of Columbia. D.C. Code §§ 1-804a, 1-804(b), 11-503; 18 U.S.C. §§ 1331, 1363,

1441(a), 1445. District of Columbia use of John Driggs Co. v. Ranger Constr. Co., 394 F. Supp. 801, 1974 U.S. Dist. LEXIS 11346 (1974).

Generally speaking, upon remand of a removed case, as with the removal in the first place, the receiving court takes the case up where the transferring court left it off, and receiving court therefore treats the pretrial orders of the transferring court as if they were its own. *Harris v. Ladner*, 828 A.2d 203, 2003 D.C. App. LEXIS 432 (2003).

Upon remand of a case that had been removed to federal court, state trial judge did not abuse his discretion by not permitting former university professor to reopen discovery or file additional exhibits and other pleadings in opposition to pending summary judgment motion filed by university and its employees with respect to professor's breach of contract and tortious interference with contract claims; federal court had refused to accept several untimely supplemental submissions in opposition to summary judgment that professor sought to file after close of discovery and the relevant filing deadlines had passed, and whether or not federal court's rulings were law of the case, state judge had ample reason to adhere to them.

Harris v. Ladner, 828 A.2d 203, 2003 D.C. App. LEXIS 432 (2003).

Upon remand of a case that had been removed to federal court, law of the case doctrine did not prevent state trial judge from deciding that certain of former university professor's breach of contract claims against university and its employees were time-barred since that was an issue the federal district court had left open in its ruling granting summary judgment to university and its employees on professor's federal law cause of action and the District of Columbia Circuit's earlier reversal of the dismissal of professor's complaint on statute of limitations grounds likewise did not settle the matter. *Harris v. Ladner*, 828 A.2d 203, 2003 D.C. App. LEXIS 432 (2003).

Necessity of removal.

Criminal proceedings against defendant who requested civil commitment in lieu of prosecution pursuant to the Narcotic Addict Rehabilitation Act were not required to be transferred from the superior court to the district court. 18 U.S.C. §§ 2901(g), 2902(a); D.C. Code § 1-101 et seq. *Banks v. United States*, 359 A.2d 8, 1976 D.C. App. LEXIS 297 (1976).

Subchapter II. Auditor.

§ 11-521. Appointment of Auditor.

For so long as the business of the court may require, the United States District Court for the District of Columbia may appoint an Auditor for the court.

(July 29, 1970, 84 Stat. 478, Pub. L. 91-358, title I, § 111.)

Cross references. — Court administration, Chief Judge of District of Columbia Court of Appeals, responsibilities and authority, see § 11-1702.

Prior Codifications. — 1981 Ed., § 11-521. 1973 Ed., § 11-521.

CHAPTER 7. DISTRICT OF COLUMBIA COURT OF APPEALS.

Subchapter I. Continuation and Organization

Sec.

ceedings outside District of Columbia.

11-701. Continuation of court; court of record; seal.

Subchapter II. Jurisdiction

11-702. Composition.

11-703. Judges; service; compensation.

11-721. Orders and judgments of the Superior Court.

11-704. Oath of judges.

11-722. Administrative orders and decisions.

11-705. Assignment of judges; divisions; hearings.

11-723. Certification of questions of law.

11-706. Absence, disability, or disqualification of judges; vacancies; quorum.

Subchapter III. Miscellaneous Provisions

11-707. Assignment of judges to and from Superior Court.

11-741. Contempt powers.

11-708. Clerks and secretaries for judges.

11-742. Oaths, affirmations, and acknowledgments.

11-709. Reports.

11-743. Rules of court.

11-710. Emergency authority to conduct pro-

11-744. Judicial conference.

Subchapter I. Continuation and Organization.

§ 11-701. Continuation of court; court of record; seal.

(a) The District of Columbia Court of Appeals (hereafter in this subchapter referred to as the “court”) shall continue as a court of record in the District of Columbia.

(b) The court shall have a seal.

(July 29, 1970, 84 Stat. 478, Pub. L. 91-358, title I, § 111.)

Cross references. — Continuation of District of Columbia court system, see § 1-207.18.

Prior Codifications. — 1981 Ed., § 11-701. 1973 Ed., § 11-701.

§ 11-702. Composition.

The court shall consist of a chief judge and eight associate judges.

(July 29, 1970, 84 Stat. 478, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-702.

1973 Ed., § 11-702.

§ 11-703. Judges; service; compensation.

(a) The chief judge and the judges of the court shall serve in accordance with Chapter 15 of this title.

(b) Judges of the court shall be compensated at the rate prescribed by law for judges of the United States courts of appeals. The chief judge, while serving in that position, shall receive an additional \$500 per annum.

(July 29, 1970, 84 Stat. 479, Pub. L. 91-358, title I, § 111; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 16(a); June 13, 1994, Pub. L. 103-266, § 1(b)(1), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-703.

1973 Ed., § 11-703.

§ 11-704. Oath of judges.

Each judge, when appointed, shall take the oath prescribed for judges of courts of the United States.

(July 29, 1970, 84 Stat. 479, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-704. 1973 Ed., § 11-704.

§ 11-705. Assignment of judges; divisions; hearings.

(a) Judges of the court shall sit on the court and its divisions in such order and at such times as the court directs.

(b) Cases and controversies shall be heard and determined by divisions of the court unless a hearing or a rehearing before the court in banc is ordered. Each division of the court shall consist of three judges.

(c) A hearing before the court in banc may be ordered by a majority of the judges of the court in regular active service. The court in banc for a hearing shall consist of the judges of the court in regular active service.

(d) A rehearing before the court in banc may be ordered by a majority of the judges of the court in regular active service. The court in banc for a rehearing shall consist of the judges of the court in regular active service, except that a retired judge may sit as a judge of the court in banc in the rehearing of a case or controversy if the judge sat on the court or a division of the court at the original hearing thereof.

(July 29, 1970, 84 Stat. 479, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(2), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-705. 1973 Ed., § 11-705.

CASE NOTES

In general.

In order to satisfy standing requirements, the plaintiff, or those whom the plaintiff properly represents, must have suffered an injury in fact, an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. *York Apts. Tenants Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1079, 2004 D.C. App. LEXIS 405 (2004).

The sine qua non of constitutional standing to sue is an actual or imminently threatened injury that is attributable to the defendant and capable of redress by the court. *York Apts. Tenants Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1079, 2004 D.C. App. LEXIS 405 (2004).

Mother, who did not appeal from child neglect adjudication, lacked standing to ask the Court of Appeals to strike from trial judge's order, as unsupported by the evidence, one of the three findings supporting adjudication, namely, finding that she was incarcerated and therefore unable to care for her children. In re

Z.C., 813 A.2d 199, 2002 D.C. App. LEXIS 798 (2002).

To establish standing, a litigant must show a substantial probability that the requested relief would alleviate her asserted injury. In re *Z.C.*, 813 A.2d 199, 2002 D.C. App. LEXIS 798 (2002).

Mother had no standing to appeal finding in neglect adjudication that she was unable to take care of the children while imprisoned for child abuse; even if her appeal were successful, mother could not have obtained any practical relief, for neglect adjudication based on her abuse of her son, and ensuing consequences of that adjudication, would be undisturbed. In re *Z.C.*, 813 A.2d 199, 2002 D.C. App. LEXIS 798 (2002).

The sine qua non of constitutional standing to sue is an actual or imminently threatened injury that is attributable to the defendant and capable of redress by the court. *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 2002 D.C. App. LEXIS 530 (2002).

Under the so-called prudential principles of standing, a plaintiff may assert only its own legal rights, may not attempt to litigate generalized grievances, and may assert only interests that fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 2002 D.C. App. LEXIS 530 (2002).

In order to satisfy standing requirements, the plaintiff, or those whom the plaintiff properly represents, must have suffered an injury in fact, an invasion of a legally protected interest which is (1) concrete and particularized, and (2) actual or imminent, not conjectural or hypothetical. *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 2002 D.C. App. LEXIS 530 (2002).

A mere interest in a problem, no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient by itself to render the organization adversely affected or aggrieved for standing purposes. *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 2002 D.C. App. LEXIS 530 (2002).

The mere fact that an organization redirects some of its resources to litigation and legal counseling in response to actions or inactions of another party is insufficient to impart standing upon the organization. *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 2002 D.C. App. LEXIS 530 (2002).

A concrete and demonstrable injury to an organization's activities is enough for standing whether the injury is economic or non-economic. *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 2002 D.C. App. LEXIS 530 (2002).

An organizational plaintiff may have standing to sue on behalf of its members as well as on its own behalf. *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 2002 D.C. App. LEXIS 530 (2002).

An association has standing to bring suit on behalf of its members when: (1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 2002 D.C. App. LEXIS 530 (2002).

Supporters of a nonprofit corporation, which had no members, were not equivalent to members for purposes of giving corporation standing to bring action against developer and District of Columbia to enjoin construction of an apartment project; supporters had no power to elect corporation's directors or officers, did not have to make up a majority of its governing board, and did not fund its activities generally, and

evidence that supporters guided corporation's actions was absent, as was evidence of a financial nexus between supporters and corporation. *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 2002 D.C. App. LEXIS 530 (2002).

The procedural injury implicit in agency failure to prepare or require an Environmental Impact Statement (EIS)—the creation of a risk that serious environmental impacts will be overlooked—is itself a sufficient injury in fact to support standing, provided this injury is alleged by a plaintiff having a sufficient geographical nexus to the site of the challenged project to expect to suffer whatever environmental consequences the project may have. *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 2002 D.C. App. LEXIS 530 (2002).

Nonprofit organization's assertion that its inability to weigh in on an environmental impact statement (EIS) for apartment complex construction jeopardized its mission and purpose did not identify concrete interest at stake sufficient to establish procedural injury as basis for standing for organization to enforce procedural requirement for EIS. *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 2002 D.C. App. LEXIS 530 (2002).

Nonprofit organization's inability to disseminate information that would have been contained in an environmental impact statement (EIS) did not amount to concrete harm to organization's programmatic activities resulting from District of Columbia's failure to order EIS for apartment complex construction project sufficient to establish informational injury as basis for organization's standing to require preparation of EIS; there was no evidence that EIS information was essential to organization's activities or that the lack of information would render those activities infeasible. *Friends of Tilden Park, Inc. v. District of Columbia*, 806 A.2d 1201, 2002 D.C. App. LEXIS 530 (2002).

The Court of Appeals looks to federal standing jurisprudence to assist in the identification of cases and controversies that properly may be considered, although the Court of Appeals is not bound by "case or controversy" requirements set forth in Article III of the United States Constitution. *Bd. of Dirs. of the Wash. City Orphan Asylum v. Bd. of Trs. of the Wash. City Orphan Asylum*, 798 A.2d 1068, 2002 D.C. App. LEXIS 111 (2002).

Under prudential principles of standing, a plaintiff may assert only its own legal rights, may not attempt to litigate generalized grievances, and may assert only interests that fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. *Bd. of Dirs. of the Wash. City Orphan Asylum v. Bd. of Trs. of the Wash. City*

Orphan Asylum, 798 A.2d 1068, 2002 D.C. App. LEXIS 111 (2002).

Board of directors of Congressionally-created orphan asylum corporation had standing to bring an action challenging board of trustees' purported repeal of corporation's bylaws and its purported adoption of bylaws divesting board of directors of all functions assigned to them by Congress; board of directors and corporation's counseling center would suffer actual injury from termination of financial support from trustees, and directors were asserting their own interest in serving in the capacity accorded them by Congressional charter. *Bd. of Dirs. of the Wash. City Orphan Asylum v. Bd. of Trs. of the Wash. City Orphan Asylum*, 798 A.2d 1068, 2002 D.C. App. LEXIS 111 (2002).

Under principles of standing, plaintiff may assert only its own legal rights, may not attempt to litigate general grievances, and may assert only claims which fall within its zone of interest protected or regulated by statute or

constitutional guaranty in question. D.C. Code 1981, § 11-705(b). *Community Credit Union Services, Inc. v. Federal Express Services Corp.*, 534 A.2d 331, 1987 D.C. App. LEXIS 488 (1987).

Although Motions Division are composed of two judges, with a third judge designated to participate in case of a tie vote or where an opinion is written, all three judges are to participate any time a "with prejudice" decision is made. D.C. Code 1981, § 11-705(b). *District of Columbia v. Trustees of Amherst College*, 499 A.2d 918, 1985 D.C. App. LEXIS 555 (1985).

Single-judge order of Court of Appeals denying motion to dismiss appeal was not binding on a three-judge division of the Court and, more importantly, could not bestow on the Court jurisdiction that did not exist in fact and law. D.C. Code 1981, § 11-705(b); Civil Rule 54(b). *Riddick v. William M. Sinclair Co.*, 481 A.2d 1306, 1984 D.C. App. LEXIS 483 (1984).

§ 11-706. Absence, disability, or disqualification of judges; vacancies; quorum.

(a) When the chief judge of the court is absent or disabled, the chief judge's duties shall devolve upon and be performed by such associate judge as the chief judge may designate in writing. In the event that the chief judge is (1) disqualified or suspended, or (2) unable or fails to make such a designation, the chief judge's duties shall devolve upon and be performed by the associate judges of the court according to the seniority of their original commissions.

(b) A chief judge whose term as chief judge has expired shall continue to serve until redesignated or until the chief judge's successor has been designated. When there is a vacancy in the position of chief judge, the position shall be filled temporarily as provided in subsection (a).

(c) Two judges shall constitute a quorum of a division of the court, and six judges shall constitute a quorum of the court sitting in banc.

(July 29, 1970, 84 Stat. 479, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(3), (4), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-706. 1973 Ed., § 11-706.

§ 11-707. Assignment of judges to and from Superior Court.

(a) The chief judge of the District of Columbia Court of Appeals may designate and assign temporarily one or more judges of the Superior Court of the District of Columbia to serve on the District of Columbia Court of Appeals or a division thereof whenever the business of the District of Columbia Court of Appeals so requires. Such designations or assignments shall be in conformity with the rules or orders of the District of Columbia Court of Appeals.

(b) Upon presentation of a certificate of necessity by the chief judge of the

Superior Court of the District of Columbia, the chief judge of the District of Columbia Court of Appeals may designate and assign temporarily one or more judges of the District of Columbia Court of Appeals to serve as a judge of the Superior Court of the District of Columbia.

(July 29, 1970, 84 Stat. 479, Pub. L. 91-358, title I, § 111.)

Section references. — This section is referred to in § 11-908.

Prior Codifications. — 1981 Ed., § 11-707. 1973 Ed., § 11-707.

CASE NOTES

In general.

Judge appointed to adjudicate contempt proceeding initiated against nonlawyer was assigned in accordance with District of Columbia Court Reorganization Act. *In re Banks*, 805

A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

§ 11-708. Clerks and secretaries for judges.

Each judge may appoint and remove a personal secretary. The chief judge may appoint and remove three personal law clerks, and each associate judge may appoint and remove two personal law clerks. In addition, the chief judge may appoint and remove not more than three law clerks for the court. The law clerks appointed for the court shall serve as directed by the chief judge.

(July 29, 1970, 84 Stat. 480, Pub. L. 91-358, title I, § 111; Dec. 31, 1975, 89 Stat. 1098, Pub. L. 94-191, § 1.)

Prior Codifications. — 1981 Ed., § 11-708.

1973 Ed., § 11-708.

§ 11-709. Reports.

Each judge shall submit to the chief judge such reports and data as the chief judge may request. Each judge shall submit a monthly written report to the chief judge and the Commission on Judicial Disabilities and Tenure which shall be in a form prescribed by the chief judge after consultation with the Commission and which shall set forth the following:

- (1) The number of days' attendance in court of the judge during the month covered.
- (2) The division of the court which the judge attended.
- (3) The number of hours per day of the judge's attendance.
- (4) The number and type of matters disposed of by the judge during the month covered.
- (5) Such other data as the chief judge may require.

(July 29, 1970, 84 Stat. 480, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(5), (6), 108 Stat. 713.)

Section references. — This section is referred to in § 11-1730.

Prior Codifications. — 1981 Ed., § 11-709. 1973 Ed., § 11-709.

§ 11-710. Emergency authority to conduct proceedings outside District of Columbia.

(a) *In general.* — The court may hold special sessions at any place within the United States outside the District of Columbia as the nature of the business may require and upon such notice as the court orders, upon a finding by either the chief judge of the court (or, if the chief judge is absent or disabled, the judge designated under section 11-706(a)) or the Joint Committee on Judicial Administration in the District of Columbia that, because of emergency conditions, no location within the District of Columbia is reasonably available where such special sessions could be held. The court may transact any business at a special session authorized pursuant to this section which it has the authority to transact at a regular session.

(b) *Notice requirements.* — If the Court of Appeals issues an order exercising its authority under subsection (a), the court—

(1) through the Joint Committee on Judicial Administration in the District of Columbia, shall send notice of such order, including the reasons for the issuance of such order, to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives; and

(2) shall provide reasonable notice to the United States Marshals Service before the commencement of any special session held pursuant to such order.

(Oct. 16, 2006, 120 Stat. 2024, Pub. L. 109-356, § 114(a)(1).)

Subchapter II. Jurisdiction.

§ 11-721. Orders and judgments of the Superior Court.

(a) The District of Columbia Court of Appeals has jurisdiction of appeals from —

(1) all final orders and judgments of the Superior Court of the District of Columbia;

(2) interlocutory orders of the Superior Court of the District of Columbia —

(A) granting, continuing, modifying, refusing, or dissolving or refusing to dissolve or modify injunctions;

(B) appointing receivers, guardians, or conservators or refusing to wind up receiverships, guardianships, or the administration of conservators or to take steps to accomplish the purpose thereof; or

(C) changing or affecting the possession of property; and

(3) orders or rulings of the Superior Court of the District of Columbia appealed by the United States or the District of Columbia pursuant to section 23-104 or 23-111(d)(2).

(b) Except as provided in subsection (c) of this section, a party aggrieved by an order or judgment specified in subsection (a) of this section, may appeal therefrom as of right to the District of Columbia Court of Appeals.

(c) Review of judgments of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia and of judgments in the Criminal Division of that court where the penalty imposed is a fine of less than \$50 for an offense punishable by imprisonment of one year or less, or by fine of not more than \$1,000, or both, shall be by application for the allowance of an appeal, filed in the District of Columbia Court of Appeals.

(d) When a judge of the Superior Court of the District of Columbia in making in a civil case (other than a case in which a child, as defined in section 16-2301, is alleged to be delinquent, neglected, or in need of supervision) a ruling or order not otherwise appealable under this section, shall be of the opinion that the ruling or order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal from the ruling or order may materially advance the ultimate termination of the litigation or case, the judge shall so state in writing in the ruling or order. The District of Columbia Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from that ruling or order, if application is made to it within ten days after the issuance or entry of the ruling or order. An application for an appeal under this subsection shall not stay proceedings in the Superior Court of the District of Columbia unless the judge of that court who made such ruling or order or the District of Columbia Court of Appeals or a judge thereof shall so order.

(e) On the hearing of any appeal in any case, the District of Columbia Court of Appeals shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

(f) The District of Columbia Court of Appeals shall hear an appeal from an order of the Superior Court of the District of Columbia holding an individual in contempt and imposing the sanction of imprisonment on such individual in the course of a case for custody of a minor child not later than 60 days after such individual requests that an appeal be taken from that order.

(g) Any appeal from an order of the Family Court of the District of Columbia terminating parental rights or granting or denying a petition to adopt shall receive expedited review by the District of Columbia Court of Appeals.

(July 29, 1970, 84 Stat. 480, Pub. L. 91-358, Title I, § 111; Sept. 23, 1989, 103 Stat. 634, Pub. L. 101-97, § 3; June 13, 1994, Pub. L. 103-266, § 1(b)(7), 108 Stat. 713; Jan. 8, 2002, 115 Stat. 2112, Pub. L. 107-114, § 4(b).)

Cross references. — District Charter provisions relating to jurisdiction of Court of Appeals, see § 1-204.31.

Section references. — This section is referred to in §§ 17-301 and 17-307.

Prior Codifications. — 1981 Ed., § 11-721. 1973 Ed., § 11-721.

Effect of amendments. — Pub. L. 107-114 added subsec. (g).

Effective date. — Section 5 of Pub. L.

101-97 provided that the amendments made by §§ 2 and 3 shall apply with respect to any individual imprisoned before the expiration of the 18-month period that begins on the Dates of the enactment of this Act for disobedience of an order or for contempt committed in the presence of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

CASE NOTES

ANALYSIS

Aggrieved parties.
 Arbitration appeals.
 Collateral order exception.
 Contempt or sanctions.
 Criminal appeals.
 Decisions reviewable, generally.
 Errors not affecting substantial rights.
 Final orders.
 —Criminal appeals, final orders.
 —Dismissal of pleadings, final orders.
 —Domestic relations appeals, final orders.
 —In general.
 —Landlord-tenant actions, final orders.
 —Medical-related appeals, final orders.
 —Probation appeals, final orders.
 —Summary judgment, final orders.
 —Zoning, final orders.
 In general.
 Interlocutory or preliminary orders.
 —Affecting possession of property, interlocutory or preliminary orders.
 —In general.
 Moot cases.
 Procedure, generally.
 Standard of review.

Aggrieved parties.

Decedent's alleged common law wife, after forfeiting her bequest by bringing an unsuccessful will contest, was no longer an interested party under the probate code with standing to appeal, as of right, post-forfeiture decisions of the probate court which did not concern her directly. *Valentine v. Elliott* (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

A person is "aggrieved," as basis for standing to appeal a trial court order, when that person's legal rights have been infringed or denied. *Valentine v. Elliott* (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

If a person has suffered no injury to his legal rights or to some legally protected relationship, he has no standing to appeal. *Valentine v. Elliott* (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

To meet the minimum requirements of a case and controversy under District of Columbia law, a plaintiff must show that it has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant,

that the injury fairly can be traced to the challenged action, and that it is likely to be redressed by a favorable decision. *Bd. of Dirs. of the Wash. City Orphan Asylum v. Bd. of Trs. of the Wash. City Orphan Asylum*, 798 A.2d 1068, 2002 D.C. App. LEXIS 111 (2002).

In order to meet the minimum requirements of a case or controversy, a plaintiff must show that (1) she has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant, (2) the injury fairly can be traced to the challenged action, and (3) the injury is likely to be redressed by a favorable decision. *Fisher v. Government Emples. Ins. Co.*, 762 A.2d 35, 2000 D.C. App. LEXIS 270 (2000).

Under prudential principles of standing, a plaintiff may assert only its own legal rights and may assert only interests that fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. *Fisher v. Government Emples. Ins. Co.*, 762 A.2d 35, 2000 D.C. App. LEXIS 270 (2000).

Father of one of mother's children was not "aggrieved" party with standing to appeal from order terminating parental rights, insofar as order related to other child who was not father's biological child and who did not have legal relationship with father. D.C. Code 1981, §§ 11-721(b), 16-2361(a). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

Appellant has standing to appeal from order of superior court only if his legal rights have been infringed or denied by that order. D.C. Code 1981, § 11-721(b). In re C.T., 724 A.2d 590, 1999 D.C. App. LEXIS 25 (1999).

Foster mother, who had been granted "party status" and had housed neglected children, was a "party aggrieved" by the trial court's order granting natural mother's motion for reunification, and as such, foster mother had a right to appeal trial court's reunification order; trial court's subsequent order vacating foster mother's party status could not operate to deprive her status as a "party aggrieved" within meaning of Court of Appeals' appellate jurisdiction. D.C. Code 1981, § 11-721(b). In re Phy. W., 722 A.2d 1263, 1998 D.C. App. LEXIS 242 (1998).

Since only party aggrieved by order or judgment may appeal as of right, amicus curiae counsel cannot appeal as of right. D.C. Code 1981, § 11-721(a, b). *Briggs v. United States*, 597 A.2d 370, 1991 D.C. App. LEXIS 260 (1991).

Executor's appeal from order directing her to collect testator's share of proceeds of sale of a real estate venture and to include those proceeds, \$17,500, in assets of estate was dismissed because executor was not "a party ag-

grieved" by such order as statutorily required, inasmuch as, although order appealed from denied priority status to testator's sister-in-law creditor, it was not a decision adverse to estate or to executor and its representative given fact that interests of estate and executor were not coextensive with that of such creditor. D.C. Code § 11-721(b). In re Estate of Jacobson, 387 A.2d 590, 1978 D.C. App. LEXIS 390 (1978).

Under statute making reviewable all final orders of the superior court, hospital superintendent from whose custody allegedly mentally ill patient had been released by order of trial court in civil commitment proceedings was "aggrieved" by trial court's judgment and, therefore, would be a proper party to appeal. D.C. Code §§ 11-721, 21-501 et seq. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Under statute providing for review of all final orders of the superior court by party "aggrieved," commonsense approach to concept of an aggrieved party should be used. D.C. Code § 11-721. In re Lomax, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

Where order of probate division determining that heir finder which had taken assignments of one-third of whatever interest each individual plaintiff had in estate was not a proper party was not appealed from, and primary objective of counsel for heir finder in appealing from order striking their appearances as counsel for individual plaintiffs was to represent heir finder, counsel did not have standing to appeal. D.C. Code SCR, Probate Rule 16; D.C. Code §§ 11-721(a)(1), (b), 11-921(a)(5)(B). American Archives' Counsel v. Bittenbender, 345 A.2d 487, 1975 D.C. App. LEXIS 252 (1975).

Arbitration appeals.

Order compelling arbitration of claims against individual firm members was unappealable interlocutory order. D.C. Code 1981, §§ 11-721(a), 16-4317. Umana v. Swidler & Berlin, Chtd., 669 A.2d 717, 1995 D.C. App. LEXIS 269 (1995).

Uniform Arbitration Act (UAA) did not confer jurisdiction upon Court of Appeals to review order confirming arbitral award while related claim against another party was pending before trial court in same case, absent proper order for entry of judgment. D.C. Code 1981, §§ 11-721, 11-721(a)(1), 16-4317; Civil Rule 54(b). Umana v. Swidler & Berlin, Chtd., 669 A.2d 717, 1995 D.C. App. LEXIS 269 (1995).

In enacting Uniform Arbitration Act (UAA), District of Columbia Council did not attempt to effect general policy against piecemeal review embodied in statute governing appeals from interlocutory orders; therefore, in absence of entry of judgment by trial court, order confirming arbitral award as to fewer than all claims

and all parties to action is not appealable. D.C. Code 1981, §§ 11-721, 16-4317; Civil Rule 54(b). Umana v. Swidler & Berlin, Chtd., 669 A.2d 717, 1995 D.C. App. LEXIS 269 (1995).

Order to compel arbitration was final order subject to appellate review where no other aspects of litigation were still before Superior Court. D.C. Code 1981, § 11-721(a)(1). Carter v. Cathedral Ave. Coop., 658 A.2d 1047, 1995 D.C. App. LEXIS 107 (1995), remanded by 947 A.2d 1143, 2008 D.C. App. LEXIS 240 (D.C. 2008).

Order granting stay pending arbitration is not appealable. D.C. Code 1981, § 11-721(a)(2)(A). Hercules & Co. v. Shama Restaurant Corp., 566 A.2d 31, 1989 D.C. App. LEXIS 230 (1989).

While trial court's disposition of lessors' arbitration claim, arising from renegotiation provision in lease, had injunctive nature to it, appeal was not from injunction in typical sense, so as to be appealable, as trial court's ruling dealt with renegotiation matter entirely, and thus appeal from that decision was premature, where factual and legal considerations underlying lower court's decision were still under attack by lessors at the trial level, by motion to alter or amend. D.C. Code 1981, § 11-721(a)(2)(A); Court of Appeals Rule 4. Carter v. Cathedral Ave. Cooperative, Inc., 532 A.2d 681, 1987 D.C. App. LEXIS 473 (1987).

Court of Appeals would not consider issues regarding lessors' claim that rent renegotiation was to be decided by arbitration, even if it had jurisdiction, as issues should not be ruled upon as pure questions of law while facts were still being disputed at trial court level. D.C. Code 1981, § 11-721(a)(2)(A); Court of Appeals Rule 4. Carter v. Cathedral Ave. Cooperative, Inc., 532 A.2d 681, 1987 D.C. App. LEXIS 473 (1987).

Even though trial court's order did not specifically state that it "confirmed" arbitration award, such order was a "final order" for purposes of appeal, in that order finally determined the rights and obligations of the parties. D.C. Code 1981, §§ 11-721(a)(1), 16-4311(d), 16-4317(a)(1, 3). Tung v. W.T. Cabe & Co., 492 A.2d 267, 1985 D.C. App. LEXIS 388 (1985).

Denials, but not grants, of stays of litigation pending arbitration are appealable interlocutory orders, since only orders that frustrate, in contrast with facilitate, arbitration impose a sufficiently serious injury to justify an immediate appeal. D.C. Code 1973, § 11-721(a)(2)(A), (d). Brandon v. Hines, 439 A.2d 496, 1981 D.C. App. LEXIS 411 (1981).

Trial court's order denying appellant's motion to confirm arbitration award, vacating the award, and ordering the parties to trial, is an appealable interlocutory order dissolving an injunction. D.C. Code 1973, § 11-721(a)(2)(A), (d). Brandon v. Hines, 439 A.2d 496, 1981 D.C. App. LEXIS 411 (1981).

Order compelling arbitration, which is not included in list of orders deemed final under the Uniform Arbitration Act and which does not dispose of entire case on merits, is interlocutory and hence unappealable under the Act. D.C. Code 1973, § 11-721(a)(1); D.C. Code 1978 Supp., Tit. 16 App. § 18. *Brandon v. Hines*, 439 A.2d 496, 1981 D.C. App. LEXIS 411 (1981).

Collateral order exception.

Court of Appeals did not have jurisdiction under collateral order doctrine to consider contractor's interlocutory appeal from trial court order denying his motion for summary judgment, which asserted immunity under judicial proceeding privilege from property owner's action challenging contractor's complaint for enforcement of mechanic's lien as unlawful and a slander of title; judicial proceedings privilege did not protect a sufficiently substantial public interest, and deferring review until final judgment would not so imperil the interest as to justify the cost of allowing immediate appeal. *McNair Builders, Inc. v. Taylor*, 3 A.3d 1132, 2010 D.C. App. LEXIS 513 (2010).

Non-final order denying patients' motions to dismiss civil recommitment petitions did not fall within collateral order exception to the finality requirement, and, thus, was not appealable; validity of recommitment petitions and procedures laid out in the Council's laws would be fully reviewable on appeal from an adverse final judgment. *In re Brown*, 974 A.2d 884, 2009 D.C. App. LEXIS 242 (2009).

Contempt or sanctions.

Dismissal with prejudice of indictment charging defendant with carrying pistol without license was not appropriate sanction for prosecutor's failure to secure presence of defendant, incarcerated and facing trial in Maryland, based on alleged interference with defendant's right to speedy trial, where defendant never asserted speedy trial violation, counsel's motion to dismiss for failure to prosecute did not request that it be with prejudice, and dismissal was rendered without any consideration of Barker speedy trial factors. *United States v. Stephenson*, 891 A.2d 1076, 2006 D.C. App. LEXIS 31 (2006).

Elements of criminal contempt are (1) willful disobedience (2) of a court order (3) causing an obstruction of the orderly administration of justice. *In re Ryan*, 823 A.2d 509, 2003 D.C. App. LEXIS 285 (2003).

Conviction for criminal contempt was supported by evidence that defendant, while under court order suspending her license to practice law in District of Columbia, entered into contracts with three witnesses to obtain immigration papers for their relatives, that language in contracts emphasized defendant's knowledge and mastery of the law, that she affirmatively

represented herself to those witnesses as an attorney and used letterhead that suggested the name of a law firm, that she referred to witnesses as "clients," and that contracts charged \$10,000 to \$15,000 for services to be rendered. *In re Ryan*, 823 A.2d 509, 2003 D.C. App. LEXIS 285 (2003).

The Court of Appeals had jurisdiction to review and enjoin the activities of nonlawyers which constitute practicing law in the District of Columbia. *In re Banks*, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Single judge of appellate court was empowered to act in adjudicating and sentencing suspended attorney for violating court's interim suspension order, though attorney claimed that judge lacked jurisdiction because federal constitution required three-judge division of court to hear criminal contempt proceeding, given authority conferred by contempt powers statute to single judge of appellate court to punish for disobedience of an order. *In re Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Suspended attorney was subject to jurisdiction of appellate court, despite claim that he was not personally served with bar counsel's motion for order to show cause or court's order to show cause, since attorney was a member of bar who had been suspended by the appellate court. *In re Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Evidence was sufficient to support attorney's conviction for criminal contempt, on charge that he practiced law during period of suspension, where attorney admitted having had actual notice of suspension, and thereafter appeared before judge, and made filings in connection with probate matter, which took him beyond 30-day grace period attorney thought he had to wind up his affairs before suspension order took effect. *In re Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Person who willfully disobeys a court order may be adjudicated in contempt. *In re Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Appellate court has the power to enforce its orders with contempt. *In re Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Criminal contempt proceedings may be prosecuted by private attorneys appointed by the court for that purpose. *In re Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Private attorneys appointed to prosecute a criminal contempt action represent the United States, not the party that is the beneficiary of the court order allegedly violated. *In re Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Criminal contempt proceedings which arise out of civil litigation are between the defendant and the public, rather than a part of the original action. *In re Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Attorney's filing of motion for reconsideration made 13 days after trial court's order that attorney be held in criminal contempt did not toll ten-day period for filing notice of appeal since motion to be timely should have been filed within ten-day appeal period. D.C. Code § 11-721(a)(1); D.C. Code Court of Appeals Rule 4, Pt. II(b)(1). *In re Alexander*, 428 A.2d 812, 1981 D.C. App. LEXIS 297 (1981), writ of certiorari denied by 454 U.S. 1149, 102 S. Ct. 1014, 71 L. Ed. 2d 303, 1982 U.S. LEXIS 401, 50 U.S.L.W. 3548 (1982).

Under statute providing that review of judgments in which penalty imposed is fine of less than \$50 for offense punishable by imprisonment of one year or less, or by fine of not more than \$1,000, or both, is by application for allowance of appeal, motorist, who had been found guilty of criminal contempt and fined \$25 through summary proceedings under statute, pursuant to which maximum punishment consists of six months imprisonment and a \$300 fine, did not have right of appeal but was required to proceed by way of application for allowance of appeal. D.C. Code § 11-721(c); D.C. Code SCR, Criminal Rule 42(a); D.C. Code Court of Appeals Rules, Rules 4, Pt. II(b)(1), 6(a). *In re Kane*, 422 A.2d 995, 1980 D.C. App. LEXIS 393 (1980).

Motorist's notice of appeal from trial court adjudication finding him guilty of criminal contempt and fining him \$25 through summary proceedings was not adequate substitute for application for allowance of appeal that was required, and accordingly his appeal was dismissed since application was not filed within three days from date of judgment. D.C. Code §§ 11-721(c), 17-307(b); D.C. Code SCR, Criminal Rule 42(a); D.C. Code Court of Appeals Rules, Rule 6(a). *In re Kane*, 422 A.2d 995, 1980 D.C. App. LEXIS 393 (1980).

Where there was no final order or judgment respecting blood grouping tests because trial judge declared issue moot and discharged his order to show cause, party had never been "punished" for not submitting to the tests and, absent the imposition of a sanction, the contempt citation alone was not a final order and raised no justiciable issue for appeal in divorce action. D.C. Code § 11-721. *Beckwith v. Beckwith*, 379 A.2d 955, 1977 D.C. App. LEXIS 262 (1977), writ of certiorari denied by 436 U.S. 907, 98 S. Ct. 2239, 56 L. Ed. 2d 405, 1978 U.S. LEXIS 1808 (1978).

Absent imposition of sanction, whether it be fine, probation or term in jail, citation imposed on assistant United States attorney for criminal contempt in and of itself was not final order

and raised no justiciable issue for appeal. D.C. Code § 11-721. *In re Cys*, 362 A.2d 726, 1976 D.C. App. LEXIS 350 (1976).

The assistant United States attorney's appeal from citation of criminal contempt for his refusal to comply with court order directing him to produce written memorandum relating to so-called first offender treatment program for purposes of discovery in criminal action wherein defendant charged with unlawful entry claimed he had been excluded from said program in derogation of his rights to due process and equal protection of laws could not be considered in posture of direct appeal from discovery order defied by government since neither of real parties in interest to that order, the government or the defendant, were party to appeal and since there had been no ruling on defendant's motion to dismiss. D.C. Code SCR, Criminal Rule 42(a, b); U.S. Const. Amend. 8; D.C. Code §§ 11-721, 11-944; 18 U.S.C. § 402. *In re Cys*, 362 A.2d 726, 1976 D.C. App. LEXIS 350 (1976).

Defendant, who conceded in open court that he had knowingly violated two conditions of his release on personal recognizance, in effect confessed to contemptuous conduct and officers' statements in bail agency report introduced at hearing simply corroborated that confession, and thus violation of defendant's right to confront officers whose statements were contained in report was harmless beyond a reasonable doubt. D.C. Code SCR, Criminal Rule 42(b); D.C. Code §§ 11-721(e), 23-1329, 23-1330; U.S. Const. Amend. 6. *In re Wiggins*, 359 A.2d 579, 1976 D.C. App. LEXIS 535 (1976).

Appeal from an adjudication of contempt but before announcement of sentence was premature and was dismissed. D.C. Code § 11-721(a). *West v. United States*, 346 A.2d 504, 1975 D.C. App. LEXIS 260 (1975).

Criminal appeals.

Superior Court judge's order remanding to Superior Court hearing commissioner for resentencing was itself not appealable; in criminal case, appeal may not be taken until after pronouncement of sentence. D.C. Code 1981, § 11-721(a)(1). *Bratcher v. United States*, 604 A.2d 858, 1992 D.C. App. LEXIS 60 (1992).

Constitution does not grant appeals as of right to criminal defendants; right of appeal is purely statutory. D.C. Code 1981, § 11-721(b). *Johnson v. United States*, 513 A.2d 798, 1986 D.C. App. LEXIS 388 (1986).

That dismissal of indictment without prejudice created no bar to seeking a new indictment did not render dismissal order nonreviewable. D.C. Code §§ 11-721, 23-104(c). *United States v. Hector*, 298 A.2d 504, 1972 D.C. App. LEXIS 315 (1972).

Decisions reviewable, generally.

Because summary judgment order denying plaintiff any recovery in personal injury action

was final and appealable, 30-day time limit for filing notice of appeal from judgment began to run at time of judgment entry, even though trial court erroneously named a dismissed party as defendant in order granting judgment and failed to name sole remaining defendant, since trial court's error required only clerical correction; it was clear from the judgment and order that the case was finally and adversely decided against plaintiff and in favor of the only remaining defendant. *Farrow v. J. Crew Group Inc.*, 12 A.3d 28, 2011 D.C. App. LEXIS 17 (2011).

District Court of Appeals retained authority to determine whether Superior Court's dismissal of action to challenge Condominium and Cooperative Conversion and Sales Branch's (CCCSB) decision to reject application for registration as tenant organization under Rental Housing Conversion and Sale Act was appropriate, although superior court's lack of jurisdiction over the merits divested District Court of Appeals of jurisdiction to address the merits. *2348 Ainger Place Tenants Ass'n v. District of Columbia*, 982 A.2d 305, 2009 D.C. App. LEXIS 507 (2009).

In the absence of specific authority a motion for reconsideration does not toll the time for noting an appeal from an otherwise final appealable order. *United States v. Stephenson*, 891 A.2d 1076, 2006 D.C. App. LEXIS 31 (2006).

The government cannot appeal from an order denying reconsideration of an earlier order dismissing an indictment. *United States v. Stephenson*, 891 A.2d 1076, 2006 D.C. App. LEXIS 31 (2006).

The denial of a motion to reconsider is not an appealable order. *United States v. Stephenson*, 891 A.2d 1076, 2006 D.C. App. LEXIS 31 (2006).

In a "record remand," appellate court retains jurisdiction over the case, and the trial court may take no action, with respect to the case, other than that specified in the record remand order; a "case remand," on the other hand, returns the case to the trial court for all purposes, the appellate court retains no jurisdiction over the case and the appeal is terminated, and if a party is dissatisfied with the action of the trial court, the only course available to obtain review is to file a new notice of appeal, once a final order or judgment is entered. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Court of Appeals did not have jurisdiction to vacate denial of first appellant's motion for attorney fees when it vacated denial of second appellant's motion for attorney fees, where first appellant had stipulated to dismissal that terminated his appeal. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

When a timely notice of appeal is later dismissed by the appellant, it is as if no appeal had been taken and the Court of Appeals may not exercise jurisdiction to adjudicate the matters raised by the dismissed notice. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

The jurisdiction of the Court of Appeals to hear appeals from the superior court is defined by statute. *Ford v. Chartone, Inc.*, 834 A.2d 875, 2003 D.C. App. LEXIS 628 (2003), remanded by 908 A.2d 72, 2006 D.C. App. LEXIS 533 (D.C. 2006).

There is no appeal as of right from judgments of the small claims and conciliation branch; review of such judgments is by application for the allowance of an appeal filed in the Court of Appeals. *W.H.H. Trice & Co. v. Faris*, 829 A.2d 189, 2003 D.C. App. LEXIS 480 (2003).

The Court of Appeals will grant an application for review of judgment in the small claims and conciliation branch only if it demonstrates apparent error or a question of law, which has not been, but should be, decided by the Court of Appeals. *W.H.H. Trice & Co. v. Faris*, 829 A.2d 189, 2003 D.C. App. LEXIS 480 (2003).

Court of Appeals may exercise its discretion to hear appeal of trial court's denial of motion to dismiss on grounds of *forum non conveniens* upon certification from Superior Court, pursuant to statutory procedures; certification procedure is intended to be exceptional and not merely a means of accelerated review for what may appear to be a difficult issue. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

The Court of Appeals does not have jurisdiction to review issues so long as the matter remains open, unfinished, or inconclusive. In re *J.W.*, 806 A.2d 1232, 2002 D.C. App. LEXIS 533 (2002).

The general rule that an appeal does not lie from a decree solely for costs is not absolute and should not be enforced when the trial court assumes the power to assess costs not legally assessable as such. *Del Rosario v. Wang*, 804 A.2d 292, 2002 D.C. App. LEXIS 383 (2002).

A challenge to the trial court's statutory authority to award particular costs lies within the Court of Appeals' power to review. *Del Rosario v. Wang*, 804 A.2d 292, 2002 D.C. App. LEXIS 383 (2002).

Court of Appeals had jurisdiction on appeal solely challenging authority to award particular items of costs, such as interpreter's fees, and manner of awarding fees. *Del Rosario v. Wang*, 804 A.2d 292, 2002 D.C. App. LEXIS 383 (2002).

Court of Appeals had jurisdiction over defendant's appeal from denial of recusal motion, even though a number of post-judgment motions remained pending in trial court when appeal was filed, where all of those motions had

been disposed of prior to disposition of case by Court of Appeals. D.C. Code 1981, § 11-721(a)(1). *Anderson v. United States*, 754 A.2d 920, 2000 D.C. App. LEXIS 136 (2000).

Court of Appeals had jurisdiction to hear non-party's appeal from monetary judgments entered against it. D.C. Code 1981, § 11-721(a)(1), (b). *Simon v. Circle Assocs.*, 753 A.2d 1006, 2000 D.C. App. LEXIS 134 (2000).

Party challenging adverse judgment bears heavy burden of persuading Court of Appeals that trial judge committed error; appellant satisfies that burden by presenting court with record sufficiently demonstrating entitlement to relief sought. D.C. Code 1981, § 11-721(e). *Robinson v. Washington Internal Medicine Assocs., P.C.*, 647 A.2d 1140, 1994 D.C. App. LEXIS 165 (1994).

Appeal from award of attorney fees would be dismissed as premature; appeal was noted while motion to modify underlying judgment was pending and order partially granting motion nullified underlying judgment. D.C. Code 1981, § 11-721. *Dyer v. William S. Bergman & Assocs.*, 635 A.2d 1285, 1993 D.C. App. LEXIS 215 (1993).

Applications for allowance of appeal would be denied, where inadequate record existed upon which Court of Appeals presently should decide most of issues certified by trial court, only one of certified issues, that of preemption, could arguably be said to present controlling question of law, and that issue was open for final determination only by United States Supreme Court as one of nationwide relevance, and, on balance, disadvantages inherent in piecemeal review would not be substantially outweighed by possibility of mitigating what might otherwise be protracted and expensive litigation. D.C. Code 1981, § 11-721(d). *W.R. Grace & Co. v. Galvagna*, 633 A.2d 25, 1993 D.C. App. LEXIS 272 (1993).

Defendant was not entitled to appeal as matter of right, where defendant absented himself from trial and delayed for several months sentencing and time for filing notice of appeal. D.C. Code 1981, § 11-721(a)(1), (b), (c). *West v. United States*, 604 A.2d 422, 1992 D.C. App. LEXIS 62 (1992), vacated by 659 A.2d 1260, 1995 D.C. App. LEXIS 119 (D.C. 1995).

Statutory right to appeal may be waived by untimely notice pursuant to procedural rules or by abandonment through flight. D.C. Code 1981, § 11-721(a)(1), (b), (c). *West v. United States*, 604 A.2d 422, 1992 D.C. App. LEXIS 62 (1992), vacated by 659 A.2d 1260, 1995 D.C. App. LEXIS 119 (D.C. 1995).

Requiring defendant to submit himself to hospital for in-patient productivity examination was functional equivalent of discovery order and was not appealable. D.C. Code 1981, § 11-721(a)(1). *Horton v. United States*, 591 A.2d 1280, 1991 D.C. App. LEXIS 121 (1991).

Protective order entered in action for summary possession in the Landlord and Tenant Branch has the "practical effect" of injunction, and injury threatened by protective order is "typically" serious; therefore, protective orders, and orders with respect to protective orders, are categorically appealable as orders with respect to injunctions. D.C. Code 1981, § 11-721(a)(2)(A). *McQueen v. Lustine Realty Co.*, 547 A.2d 172, 1988 D.C. App. LEXIS 143 (1988).

Order staying landlord's action for possession and overdue rent pending outcome of petition before the Rental Housing Commission was not appealable where tenant paid disputed rent into registry of court and had subsequently vacated the apartment. D.C. Code 1981, § 11-721. *Hagner Management Corp. v. Lawson*, 534 A.2d 343, 1987 D.C. App. LEXIS 503 (1987).

Order staying proceeding pending before court which issues the order is not on its face an injunction and thus is not appealable as such unless it can be deemed to have the effect of an injunction. D.C. Code 1981, § 11-721(a)(2)(A). *Hagner Management Corp. v. Lawson*, 534 A.2d 343, 1987 D.C. App. LEXIS 503 (1987).

Statute providing for appeal of orders changing or affecting possession of property is inapplicable to exchange of money. D.C. Code § 11-721(a)(2)(C). *Dameron v. Capitol House Associates Ltd. Partnership*, 431 A.2d 580, 1981 D.C. App. LEXIS 300 (1981).

Denial of motion to dismiss based on doctrine of *forum non conveniens* is appealable order. D.C. Code §§ 11-721(a)(1), 13-425. *Crown Oil & Wax Co. v. Safeco Ins. Co.*, 429 A.2d 1376, 1981 D.C. App. LEXIS 271 (1981).

In replevin action, order determining quantum of attorney fees to be paid to replevying party was appealable order rather than prior order which had established entitlement to attorney fees in amount to be determined later. D.C. Code § 11-721(a)(1). *Trilon Plaza Co. v. Allstate Leasing Corp.*, 399 A.2d 34, 1979 D.C. App. LEXIS 302 (1979).

In order to discourage intentional withholding of objections by defense counsel, errors not objected to at trial are unreachable on review unless they fall within purview of plain error rule. D.C. Code § 11-721(e); D.C. Code SCR, Criminal Rules 30, 52(b); Fed. Rules Crim. Proc. rules 30, 54, 18 U.S.C. *Watts v. United States*, 362 A.2d 706, 1976 D.C. App. LEXIS 343 (1976).

Denial of class action status is generally not an appealable order, however, it may become so where refusal to review would as a practical matter end litigation or where refusal to review would result in denial of effective appellate review. D.C. Code § 11-721(a)(1); D.C. Code SCR, Civil Rule 23. *Kanelos v. District of Columbia*, 346 A.2d 247, 1975 D.C. App. LEXIS 261 (1975).

Order disqualifying counsel is appealable. D.C. Code § 11-721(a)(1). *American Archives' Counsel v. Bittenbender*, 345 A.2d 487, 1975 D.C. App. LEXIS 252 (1975).

District of Columbia Court of Appeals is not proper forum to initiate litigation on constitutional matters, since it is an appellate court and not a court of original jurisdiction and rules on issues only after decision has been entered by trial court or by an agency in the contested case. D.C. Code §§ 1-1510, 5-412, 11-721, 11-722. *Dupont Circle Citizen's Asso. v. District of Columbia Zoning Com.*, 343 A.2d 296, 1975 D.C. App. LEXIS 433 (1975).

While losing party in small claims action is not entitled to appeal as matter of right, court usually grants appeals in cases where appellant states grounds showing apparent error or question of law which has not been but should be decided by reviewing court. D.C. Code § 11-721(c). *Karath v. Generalis*, 277 A.2d 650, 1971 D.C. App. LEXIS 331 (1971).

Errors not affecting substantial rights.

Lack of support for trial court's finding, after non-jury trial, that real estate agent had forged the signatures, in sales agreement, of home vendor and vendor's brother who held power of attorney from vendor, which finding was based on trial court's erroneous recollection of testimony of real estate agent as admitting that signatures on sales agreement were not those of vendor or vendor's brother, did not affect agent's substantial rights, and thus, reversal and remand for new trial were not required, in action against agent for breach of fiduciary duty; core of case was breach of fiduciary duty, not fraud based on forgery, and all damages could be traced to agent's breach of fiduciary duties, e.g., drafting a sales agreement, as undisclosed dual agent for purchaser and vendor, with highly unusual terms favoring purchaser. *Jenkins v. Strauss*, 931 A.2d 1026, 2007 D.C. App. LEXIS 552 (2007).

Any error by trial judge in not exploring further the propriety of detective's alleged conduct of telling prospective defense witness that if she testified in certain manner, detective would appear in court and falsely testify that witness had told him more inculpatory version of events, did not affect defendant's substantial rights in prosecution for destruction of property; defense counsel never suggested that witness would have testified but for her intimidation by the detective, and trial judge found defendant guilty based almost entirely on the testimony of State's eyewitness, whose testimony defendant did not suggest could have been impeached by any testimony intimidated witness was prepared to offer. *Scott v. United States*, 898 A.2d 899, 2006 D.C. App. LEXIS 213 (2006).

When the result is correct as a matter of law, a lower court decision may be upheld despite the fact that the court relied upon a wrong ground or gave a wrong reason. *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Sci., Inc.*, 858 A.2d 457, 2004 D.C. App. LEXIS 445 (2004).

In order to show plain error, the party alleging error must demonstrate that the trial court's decision was plainly or obviously wrong and that the error was so serious that failure to correct it will result in a miscarriage of justice. *In re S.S.*, 821 A.2d 353, 2003 D.C. App. LEXIS 220 (2003).

Substitute judge's error in not certifying familiarity with the record before denying motion to alter or amend the award of costs did not prejudice the responsible parties, where the motion made an argument based on a factually incorrect premise and made arguments raised before the trial judge in opposition to costs before her illness. *Del Rosario v. Wang*, 804 A.2d 292, 2002 D.C. App. LEXIS 383 (2002).

There was no plain error as to admission of Housing and Urban Development (HUD) inspection report in home purchasers' action against vendor and real estate agent, even if the report was hearsay; if purchasers had made a timely hearsay objection in the trial court, the author of the report could have been subpoenaed and made available to testify at trial. *Dean v. Garland*, 779 A.2d 911, 2001 D.C. App. LEXIS 189 (2001), writ of certiorari denied by 536 U.S. 924, 122 S. Ct. 2591, 153 L. Ed. 2d 780, 2002 U.S. LEXIS 4497, 70 U.S.L.W. 3774 (2002).

Not every admission of inadmissible hearsay or other evidence can be considered to be reversible error unavoidable through limiting instructions. *Dean v. Garland*, 779 A.2d 911, 2001 D.C. App. LEXIS 189 (2001), writ of certiorari denied by 536 U.S. 924, 122 S. Ct. 2591, 153 L. Ed. 2d 780, 2002 U.S. LEXIS 4497, 70 U.S.L.W. 3774 (2002).

Failure to give immediate corrective instruction upon erroneous admission of "other crimes" evidence in form of testimony that defendant had set fires before in his father's house could not be deemed harmless in prosecution for felony malicious destruction of property, alleging that defendant again set that house on fire; case against defendant was circumstantial, and defense expert testified at length about inadequacies of government investigation and proof to establish that fire was intentionally set or to have originated as government claimed. *Dean v. Garland*, 779 A.2d 911, 2001 D.C. App. LEXIS 189 (2001), writ of certiorari denied by 536 U.S. 924, 122 S. Ct. 2591, 153 L. Ed. 2d 780, 2002 U.S. LEXIS 4497, 70 U.S.L.W. 3774 (2002).

Under *Kotteakos*, which is applied to those instances in which the defendant was not

wholly deprived of an opportunity to cross-examine a witness, the test for harmless error is whether a reviewing court can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. *Villa v. District of Columbia*, 778 A.2d 309, 2001 D.C. App. LEXIS 158 (2001).

Driver was entitled to new trial on her personal injury claim since trial judge abused her discretion by failing to strike motorist's closing argument suggesting, without a factual predicate showing fraud or frivolous complaints, that, because of two prior claims, driver had motive to file personal injury suit against motorist and since trial court's decision to accept juror's ambiguous claim that she could be impartial despite her very unpleasant experience as a defendant in a lawsuit, and her attitudes toward tort reform and plaintiffs, did not constitute harmless error. *Lewis v. Voss*, 770 A.2d 996, 2001 D.C. App. LEXIS 89 (2001).

There was no error, plain or otherwise, in trial court's not sua sponte excluding, as evidence of uncharged criminal conduct, testimony of government's witness that defendant "didn't come to school regular," as failure to "come to school regular" was not a crime. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

Under the plain error doctrine, reversal is justified only in exceptional circumstances where a miscarriage of justice would otherwise result. *Washington v. United States*, 760 A.2d 187, 2000 D.C. App. LEXIS 234 (2000).

A trial court's failure to give a requested jury instruction is not reversible error where the instructions given properly inform the jury of the applicable legal principles involved. *Timberlake v. United States*, 758 A.2d 978, 2000 D.C. App. LEXIS 208 (2000).

Refusal to give requested instruction to determine whether allegedly unauthorized use of motor vehicle was without consent of owner or some other person empowered to consent in owner's behalf required reversal, even though driver argued that he lacked the knowledge if he genuinely thought that unlicensed juvenile had authority to use car and let driver use it temporarily; deliberating jury asked whether the relevant authorization was from owner or the juvenile. D.C. Code 1981, §§ 11-721(e), 22-3815. *Jackson v. United States*, 600 A.2d 90, 1991 D.C. App. LEXIS 327 (1991).

Instructional errors not raised at trial will not be disturbed on appeal if, for example, evidence of guilt is overwhelming or counsel's failure to object can be viewed as a tactical choice. Criminal Rule 30; D.C. Code 1981, § 11-721(e). *Allen v. United States*, 495 A.2d 1145, 1985 D.C. App. LEXIS 433 (1985).

Exclusion of opinion testimony of physician, who had participated in surgery on patient which led to medical malpractice action, worked no appreciable prejudice on defendant doctor and hospital, where physician's proffered opinion testimony would have been cumulative of other evidence presented on causation issue, including testimony by another physician present at surgery, documentary evidence, and expert testimony; thus, even if exclusion was assumed to be erroneous, it was harmless. D.C. Code 1981, § 11-721(e). *Adkins v. Morton*, 494 A.2d 652, 1985 D.C. App. LEXIS 404 (1985).

On appeal, defendant must demonstrate plain error in order to prevail on claim of inadequate jury instruction if defendant was given opportunity to raise any objections to jury instructions at time of instructions and failed to do so. D.C. Code 1981, § 11-721(e). *Murchison v. United States*, 486 A.2d 77, 1984 D.C. App. LEXIS 575 (1984).

In prosecution for grand larceny and receiving stolen property, trial judge's statements to jury, in instructions concerning \$100 value requirement for the crimes charged, that he found as a matter of law that the value of the property allegedly stolen was in excess of \$100, and judge's failure to further charge that jury so as to put the fact-finding responsibility regarding value back in their hands, was a partial directed verdict and therefore error, and the error was not harmless in light of fact that value was an essential element of the crimes charged. D.C. Code 1981, § 11-721(e); §§ 22-2201, 22-2205 (repealed). *Minor v. United States*, 475 A.2d 414, 1984 D.C. App. LEXIS 415 (1984).

The District of Columbia Court of Appeals, vested with authority to hear appeals from convictions in criminal proceedings of the superior court and to reverse such convictions where the proceedings were so infected with error as to require reversal, is authorized to consider whether infirmities in the jury-selection process vitiate a conviction and, on so holding, reverse that conviction. U.S. Const. Art. 1, § 1 et seq.; D.C. Code 1973, § 11-1902; D.C. Code 1981, §§ 11-721, 17-306. *Sweet v. United States*, 449 A.2d 315, 1982 D.C. App. LEXIS 407 (1982).

To extent that trial court's facially inconsistent instruction was interpretable as authorizing jury to consider defense witness' prior inconsistent statements as substantive evidence, the instruction was error but did not rise to level of plain error where the prior statement was, at most, cumulative evidence of defendant's presence at scene. D.C. Code 1973, § 11-721(e); Civil Rules 30, 52(b). *Turner v. United States*, 443 A.2d 542, 1982 D.C. App. LEXIS 307 (1982).

Statute providing that District of Columbia Court of Appeals, on hearing of appeal in any case, shall give judgment after examination of record without regard to errors or defects which do not affect substantial rights of parties is merely qualification of harmless error rule under which insubstantial, unprejudicial errors and defects are ignored in determination of merits of appeal, and such statute does not cure jurisdictional defects. D.C. Code Court of Appeals Rules, rule 4, pt.II(b)(1); Fed.Rules Crim.Proc. rule 37(a)(2), 18 U.S.C.; Fed.Rules App.Proc. rules 4(b), 26(b), 18 U.S.C.; D.C. Code § 11-721(e). *Brown v. United States*, 379 A.2d 708, 1977 D.C. App. LEXIS 259 (1977).

Since defense counsel did not object to antideadlock charge after it was given, review by Court of Appeals of charge was limited to a determination of whether it resulted in a plain error or defect affecting substantial rights of defendants. D.C. Code § 11-721(e). *Nelson v. United States*, 378 A.2d 657, 1977 D.C. App. LEXIS 395 (1977).

In light of adoption of preponderance standard for determining voluntariness of a confession, any error in admitting defendant's statement while entertaining a reasonable doubt about voluntariness was at best harmless error which the Court of Appeals was required to ignore. D.C. Code § 11-721(e). *Hawkins v. United States*, 304 A.2d 279, 1973 D.C. App. LEXIS 267 (1973).

Allowing officer to testify about events occurring after alleged assault on him, while preventing defendant from testifying about a beating he assertedly received from other guards in officer's presence immediately thereafter, if error, did not constitute an error affecting substantial rights of parties, for purposes of statute directing the Court of Appeals to render judgment on appeal without regard to errors not affecting the substantial rights of parties. D.C. Code § 11-721(e). *Johnson v. United States*, 298 A.2d 516, 1972 D.C. App. LEXIS 312 (1972).

Final orders.

— Criminal appeals, final orders.

Order allowing for jurors to submit written questions to be asked of witnesses during criminal trials did not fall within the collateral order exception to the final judgment rule. D.C. Code 1981, § 11-721(a)(1). *Yeager v. Greene*, 502 A.2d 980, 1985 D.C. App. LEXIS 571 (1985).

Government could not appeal sentencing order pursuant to statute giving Court of Appeals jurisdiction of appeals from final orders and judgments of superior court. D.C. Code § 11-721(a)(1). *United States v. Stokes*, 365 A.2d 615, 1976 D.C. App. LEXIS 398 (1976).

In that motion was solely for return of weapons taken in search pursuant to warrant and in that a nolle prosequi was entered on charges arising from seizure of weapons, denial of motion for return of seized weapons would be treated as an appealable final order. D.C. Code §§ 11-721(a), 22-3214(a); D.C. Code SCR, Criminal Rule 41(g). *Epstein v. United States*, 359 A.2d 274, 1976 D.C. App. LEXIS 303 (1976).

Decision in criminal case is final for appellate purposes only when litigation between parties is terminated and nothing remains but enforcement by execution of what has been determined; to create finality in criminal case it is necessary that there be a judgment of conviction followed by a sentence. D.C. Code § 11-721(a). *West v. United States*, 346 A.2d 504, 1975 D.C. App. LEXIS 260 (1975).

— Dismissal of pleadings, final orders.

Trial court's order dismissing complaint brought by former shareholder of cooperative against developer who had acquired cooperative for breach of settlement agreement, rescission of settlement agreement, and injunctive relief in favor of arbitration pursuant to parties' settlement agreement was not a final, appealable order; order dismissed shareholder's complaint, thereby compelling arbitration, but stayed her case. *Evans v. Dreyfuss Bros.*, 971 A.2d 179, 2009 D.C. App. LEXIS 173 (2009).

Order dismissing with prejudice indictment charging defendant with carrying pistol without license based on alleged violation of defendant's right to speedy trial was final and appealable, notwithstanding pendency of motion for reconsideration; order of dismissal was appealable by itself, denial of motion for reconsideration was not appealable, and motion for reconsideration would not have tolled time for taking appeal. *United States v. Stephenson*, 891 A.2d 1076, 2006 D.C. App. LEXIS 31 (2006).

The denial of a motion to dismiss a complaint is usually not immediately appealable. *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 774 A.2d 332, 2001 D.C. App. LEXIS 129 (2001).

Under the collateral order doctrine, a ruling such as the denial of a motion to dismiss may be appealable if it has a final and irreparable effect on important rights of the parties. *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 774 A.2d 332, 2001 D.C. App. LEXIS 129 (2001).

Trial court's order dismissing counterclaim without prejudice is an appealable, final order. D.C. Code 1981, § 11-721(a)(1). *Lloyd F. Ukwu, P.C. v. Bell Atlantic-Washington*, 652 A.2d 1109, 1995 D.C. App. LEXIS 5 (1995).

Dismissal of complaint, even without prejudice, is final order and falls within scope of

appellate jurisdiction of the District of Columbia Court of Appeals. D.C. Code 1981, § 11-721(a)(1). *Perry v. District of Columbia*, 474 A.2d 824, 1984 D.C. App. LEXIS 361 (1984).

Dismissal of complaint without prejudice was final order and, thus, District of Columbia Court of Appeals had jurisdiction to consider appeal from such dismissal. D.C. Code 1981, § 11-721(a)(1). *Perry v. District of Columbia*, 474 A.2d 824, 1984 D.C. App. LEXIS 361 (1984).

— Domestic relations appeals, final orders.

Order of magistrate judge, in proceeding on competing adoption petitions, denying maternal grandmother's adoption petition, waiving biological parents' consent to foster parents' adoption petition, and ordering Child and Family Services Agency (CFSA) to make necessary preparations to proceed to a final decree on foster parents' petition, was not final for purposes of grandmother's motion for review by a family court judge, and thus order of family court judge dismissing grandmother's first motion for review was not a final order that triggered 30-day period for grandmother to appeal to the Court of Appeals, as such order of the magistrate judge did not dispose of the whole case on its merits. In re C.A.B., 4 A.3d 890, 2010 D.C. App. LEXIS 551 (2010).

Putative father's claim that the trial court erred in failing to grant him immediate custody of neglected minor child was not properly before the Court of Appeals, as there was no final order or judgment on custody to review. In re J.W., 806 A.2d 1232, 2002 D.C. App. LEXIS 533 (2002).

In the context of child neglect proceedings after the court has made an adjudication of neglect, an order that is merely a step toward restoration of physical custody, termination of parental rights, or adoption is not a "final order" and therefore is not appealable. In re K.M.T., 795 A.2d 688, 2002 D.C. App. LEXIS 80 (2002).

Permanency planning orders in child neglect proceedings, changing the goal of the proceedings from reunification to long-term foster care, were not "final orders" that were appealable. In re K.M.T., 795 A.2d 688, 2002 D.C. App. LEXIS 80 (2002).

An order changing a permanency planning goal in a child neglect proceeding is not a "final order" that is appealable; such an order merely sets goals for the children and does not affect the parents' substantive rights in any way. In re K.M.T., 795 A.2d 688, 2002 D.C. App. LEXIS 80 (2002).

An order waiving a birth parent's consent to adoption is not a final order and may not be appealed until the adoption proceedings have been concluded; the reason is that only upon a

final decree of adoption are the "rights and duties" of natural parents terminated. In re S.J., 772 A.2d 247, 2001 D.C. App. LEXIS 105 (2001).

Birth father could not immediately appeal order waiving his consent to adoption; no order terminating his parental rights had been entered, and, even though trial court later terminated father's visitation rights, father did not appeal that order. In re S.J., 772 A.2d 247, 2001 D.C. App. LEXIS 105 (2001).

At least in some circumstances, a parent who has been denied all contact with her child is not precluded from challenging that denial on appeal until her parental rights have been terminated or an order of adoption has been entered. In re S.J., 772 A.2d 247, 2001 D.C. App. LEXIS 105 (2001).

Order waiving birth father's consent to adoption was not appealable as order in nature of injunction; waiver of consent dispensed with need for parental consent to adoption, but it was not injunction. In re S.J., 772 A.2d 247, 2001 D.C. App. LEXIS 105 (2001).

Trial judge's refusal to order investigation, proposed by counsel for mother, into the circumstances of teenager's pregnancy and motherhood was neither a death knell to the mother's claims, for purposes of death knell exception to finality requirement, nor an appealable order; mother was free to move court to award her custody of teenager, and, if she filed such motion, and if this relief was denied, mother's challenge to court's refusal to order investigation would merge into appeal from denial of her motion for custody and could therefore be entertained at that point. In re D.M., 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

Trial judge's order refusing to modify an earlier ruling in which she had barred any visitation between teenager and her mother and prohibiting any visitation between teenager and her mother's sister was final, for purposes of appeal, with respect to the visitation issue; no motion for termination of parental rights had been filed, and no petition to adopt teenager was pending, judge's decision prohibited visitation under entirely new circumstances, namely teenager's motherhood, and denial of visitation had continued for more than four years. In re D.M., 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

Mother who has been denied all contact with her child is not precluded from challenging that denial on appeal until her parental rights have been terminated or an order of adoption has been entered. In re D.M., 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

Order in ongoing probate case determining that petitioner was daughter of intestate decedent was final, appealable order, even though administration of decedent's estate continued.

D.C. Code 1981, § 11-721(a)(1). *Murphy v. McCloud*, 650 A.2d 202, 1994 D.C. App. LEXIS 227 (1994).

Order in action for the adjudication of paternity and support was not final for purposes of an appeal, though paternity issue was resolved and temporary support determination had been made, where amount of support was not finally decided. D.C. Code 1981, § 11-721(a). *L.A.W. v. M.E.*, 606 A.2d 160, 1992 D.C. App. LEXIS 91 (1992).

Action seeking adjudication of paternity and support is not final for purposes of appeal until both paternity issue and support issue are finally resolved. D.C. Code 1981, § 11-721(a). *L.A.W. v. M.E.*, 606 A.2d 160, 1992 D.C. App. LEXIS 91 (1992).

Order granting wife's complaint for absolute divorce, awarding her alimony, child support, and joint custody of parties' minor child, and determining and setting values on marital assets subject to distribution was not final and appealable, where trial court failed to make any actual distribution of marital assets or to determine which assets were to be received by each party. D.C. Code 1981, §§ 11-721, 11-721(a)(2)(C), 16-910(b). *McDiarmid v. McDiarmid*, 594 A.2d 79, 1991 D.C. App. LEXIS 195 (1991), remanded by 649 A.2d 810, 1994 D.C. App. LEXIS 191 (D.C. 1994).

Although order permitting intraracial adoption was labeled "interlocutory" it was appealable as a final order under the doctrine of practical finality, and since foster parents filed appeal within 30 days of denial of their motion for amendment of and additions to findings of fact the appeal was timely. (Per Ferren, J., with one Judge concurring specially.) D.C. Code 1973, §§ 11-721(a)(1, 2), 16-309(c, d); Court of Appeals Rule 4, pt. II(a)(1, 2). In re *Petition of R.M.G.*, 454 A.2d 776, 1982 D.C. App. LEXIS 519 (1982).

In action by wife against husband for separate maintenance defended on basis of an antenuptial agreement, order that antenuptial agreement was valid and that husband could impose it as a defense, except so far as it limited to \$10,000 his obligation to support his wife, was not a final appealable order, since, at the hearing, the trial court had stated that if agreement is valid then subsequent hearing would be held to determine what support, if any, wife was entitled to and that matter remained to be determined. D.C. Code § 11-721(a, d). *Burtoff v. Burtoff*, 390 A.2d 989, 1978 D.C. App. LEXIS 551 (1978).

Divorce decree insofar as concerning disposition of property and divorce itself was "final order" subject to review within time limited; fact that trial court left determination of child support open to await further hearing and findings did not impair finality of judgment on other issues or extend time for appeal; resolu-

tion of such issues became final when, after 30 days, time for appeal expired and that judgment became law of the case. D.C. Code § 11-721(a)(2)(C). *Quarles v. Quarles*, 353 A.2d 285, 1976 D.C. App. LEXIS 493 (1976), writ of certiorari denied by 429 U.S. 922, 97 S. Ct. 321, 50 L. Ed. 2d 290, 1976 U.S. LEXIS 3335 (1976).

— In general.

Order lifting stay and dismissing without prejudice action brought by former shareholder of cooperative against developer who had acquired cooperative for breach of settlement agreement, rescission of settlement agreement, and injunctive relief was properly before Court of Appeals, on shareholder's appeal of order, as shareholder's brief implicitly discussed both this order and prior order dismissing complaint in favor of arbitration pursuant to parties' settlement agreement and staying case at shareholder's request, and shareholder specifically listed order lifting stay in her notice of appeal. *Evans v. Dreyfuss Bros.*, 971 A.2d 179, 2009 D.C. App. LEXIS 173 (2009).

Any lack of finality of an order or judgment is a bar to appellate review over such order or judgment. *Evans v. Dreyfuss Bros.*, 971 A.2d 179, 2009 D.C. App. LEXIS 173 (2009).

Trial court's order requiring that tenant pay landlord's attorney fees, in tenant's Tenant Opportunity to Purchase Act (TOPA) action against landlord, was not a final, appealable order, where trial court had not determined the amount of attorney fees to be paid. *Linen v. Lanford*, 945 A.2d 1173, 2008 D.C. App. LEXIS 123 (2008).

Order staying enforcement of child support order for a specified finite period was a final appealable order, even though the parties and the court contemplated that a further modification of the support order might soon follow; ruling purported to be a final order with respect to the time period specified. *Wilkins v. Bell*, 917 A.2d 1074, 2007 D.C. App. LEXIS 83 (2007).

To be final and appealable, an order must dispose of the whole case on its merits, so that the court has nothing remaining to do but to execute the judgment or decree already rendered. *United States v. Stephenson*, 891 A.2d 1076, 2006 D.C. App. LEXIS 31 (2006).

While the Court of Appeals has jurisdiction over all final orders and judgments of the Superior Court, orders compelling discovery are not final, nor are they interlocutorily appealable under the collateral order doctrine. *Walter E. Lynch & Co. v. Fuisz*, 862 A.2d 929, 2004 D.C. App. LEXIS 637 (2004).

The collateral order doctrine, which allows an immediate appeal from a non-final order, is to be applied with caution. *Galloway v. Clay*, 861 A.2d 30, 2004 D.C. App. LEXIS 580 (2004).

The requirement that the trial court proceeding be concluded in its entirety before an appeal

may be taken serves the important policy goals of preventing the unnecessary delays resultant from piecemeal appeals and refraining from deciding issues which may eventually be mooted by the final judgment. *Galloway v. Clay*, 861 A.2d 30, 2004 D.C. App. LEXIS 580 (2004).

Normally, an order or judgment is deemed to be "final," and therefore appealable, only if it disposes of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered. *Galloway v. Clay*, 861 A.2d 30, 2004 D.C. App. LEXIS 580 (2004).

Lack of finality of lower court judgment is a bar to appellate jurisdiction; requirement of finality serves the important policy goals of preventing the unnecessary delays resultant from piecemeal appeals and refraining from deciding issues which may eventually be mooted by the final judgment. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

In determining finality of trial court order for purposes of appellate review, the appellate court is concerned not merely with the interests of the immediate parties but, more importantly, with those interests that pertain to the smooth functioning of judicial system. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

Normally, an order or judgment is deemed to be final, for purposes of determining appellate jurisdiction, only if it disposes of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

An order denying a motion to dismiss ordinarily does not meet standard of finality and usually is not immediately appealable, for such a ruling does not terminate the action but instead allows it to proceed. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

Any lack of finality of an order or a judgment is a bar to appellate review over such issue or order. *Heard v. Johnson*, 810 A.2d 871, 2002 D.C. App. LEXIS 656 (2002).

An order is final, and thus subject to appellate review, when it disposes of the whole case on its merits so that the court has nothing remaining to do but execute the judgment or decree already rendered. *Heard v. Johnson*, 810 A.2d 871, 2002 D.C. App. LEXIS 656 (2002).

The collateral order doctrine is a narrow exception to the requirement that all orders and judgments must be final in order to allow for appellate review, and under such doctrine, a decision is appealable if it falls within that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause

itself to require that appellate consideration be deferred until the whole case is adjudicated. *Heard v. Johnson*, 810 A.2d 871, 2002 D.C. App. LEXIS 656 (2002).

Under the collateral order doctrine, a ruling such as an order denying a motion to dismiss may be appealable if it has a final and irreparable effect on the important rights of the parties. *Heard v. Johnson*, 810 A.2d 871, 2002 D.C. App. LEXIS 656 (2002).

"Final orders," for appellate purposes, are those that dispose of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered. *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 774 A.2d 332, 2001 D.C. App. LEXIS 129 (2001).

To be reviewable, judgment or decree must not only be final, but also complete, that is, final not only as to all parties, but as to whole subject matter and all the causes of action involved, and general rule is that order stating sanction, quantum of relief, or the like is the one with requisite finality. *In re D.M.*, 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

Order is final, for purposes of appeal, only if it disposes of whole case on its merits, so that court has nothing remaining to do, but to execute the judgment or decree already rendered. *In re D.M.*, 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

In the interest of avoiding piecemeal appeals and refraining from deciding issues which may eventually be mooted by final judgment, the Court of Appeals will not review trial court rulings which are not final. *Medlantic Health Care Group, Inc. v. Cunningham*, 755 A.2d 1032, 2000 D.C. App. LEXIS 160 (2000).

An exception to the general prohibition against appeals from non-final orders has been carved out to allow for expressly limited certification of questions to the Court of Appeals, even though these matters fall short of being final orders or judgments. *Medlantic Health Care Group, Inc. v. Cunningham*, 755 A.2d 1032, 2000 D.C. App. LEXIS 160 (2000).

Court of Appeals has no jurisdiction to entertain an appeal from a non-final order, and consent of the parties cannot enlarge Court's jurisdiction. D.C. Code 1981, § 11-721(a)(1). *Anderson v. United States*, 754 A.2d 920, 2000 D.C. App. LEXIS 136 (2000).

To be final and appealable, an order must dispose of the whole case on its merits so that the court has nothing remaining to do but to execute the judgment or decree already rendered. D.C. Code 1981, § 11-721(a)(1). *Anderson v. United States*, 754 A.2d 920, 2000 D.C. App. LEXIS 136 (2000).

Statute giving aggrieved party right to appeal from final order or judgment bars appeal unless order appealed from disposes of all issues in case; order must be final as to all

parties, all subject matter, and all causes of action involved. D.C. Code 1981, § 11-721(a)(1). *West v. Morris*, 711 A.2d 1269, 1998 D.C. App. LEXIS 107 (1998).

Even though at time the notice of appeal from dismissal order not disposing of all parties was filed the appeal was subject to dismissal as premature, by the time the appeal was submitted to the panel, it was final, because complaint had been dismissed against the only remaining defendant. D.C. Code 1981, § 11-721(a)(1). *West v. Morris*, 711 A.2d 1269, 1998 D.C. App. LEXIS 107 (1998).

Order entitling party to Rule 11 award of costs and attorney fees in amount yet to be determined is nonfinal order that is not otherwise appealable by statute. D.C. Code 1981, § 11-721(a)(1-3); Civil Rule 11. *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

Trial court order denying church's motion to dismiss action alleging negligent failure of church to account for church funds and to issue financial reports to church members was treated as final, collateral order and was subject to appellate review; order conclusively rejected church's claim of immunity from suit under free exercise clause, resolved claim of immunity unrelated to merits, and would effectively cause church to lose its immunity if case proceeded to trial. U.S. Const. Amend. 1; D.C. Code 1981, § 11-721(a)(1). *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith v. Beards*, 680 A.2d 419, 1996 D.C. App. LEXIS 144 (1996), writ of certiorari denied by 520 U.S. 1155, 117 S. Ct. 1335, 137 L. Ed. 2d 494, 1997 U.S. LEXIS 2117, 65 U.S.L.W. 3665 (1997).

To be "final" so as to entitle adversely affected party to an appeal, a court order must dispose of the whole case on the merits so that the court has nothing to do but to execute the judgment or decree already rendered. D.C. Code 1981, § 11-721(a)(1). *Camalier & Buckley, Inc. v. Sandoz & Lamberton, Inc.*, 667 A.2d 822, 1995 D.C. App. LEXIS 223 (1995).

Statute giving aggrieved party right to appeal from final order or judgment bars appeal unless order appealed from disposes of all issues in case; order must be final as to all parties, all subject matter, and all causes of action involved. D.C. Code 1981, § 11-721(a)(1). *Davis v. Davis*, 663 A.2d 499, 1995 D.C. App. LEXIS 153 (1995).

Disqualification of attorney is not immediately appealable collateral order, but, like most trial orders, must await entry of final judgment on merits before being subject to appellate review; overruling *Urciolo*, 449 A.2d 287 and *Bittenbender*, 345 A.2d 487. D.C. Code 1981, § 11-721(a)(1). In re *Estate of Tran Van Chuong*, 623 A.2d 1154, 1993 D.C. App. LEXIS 47 (1993), amended by 1993 D.C. App. LEXIS 132 (D.C. June 3, 1993).

Order quashing service of process and dismissing complaint was an appealable "final order." D.C. Code 1981, § 11-721(a)(1). *State Farm Mut. Auto. Ins. Co. v. Brown*, 593 A.2d 184, 1991 D.C. App. LEXIS 173 (1991).

Order granting mistrial or new trial is not appealable final order. D.C. Code 1981, § 11-721. *Hairlox Co. v. McDonald*, 557 A.2d 163, 1989 D.C. App. LEXIS 62 (1989).

Denial of motion to vacate grant of mistrial or to limit retrial on issue of damages was not appealable final order. D.C. Code 1981, § 11-721. *Hairlox Co. v. McDonald*, 557 A.2d 163, 1989 D.C. App. LEXIS 62 (1989).

Trial court order granting university's motion for new trial, in action brought by former faculty members for breach of contract and tortious interference with contractual relations, subject only to condition that if the faculty members accepted remittitur the motion would be denied, could not convert an otherwise nonfinal order into a final order; furthermore, even if faculty members had refused to accept the remittitur, the order would not be appealable. D.C. Code 1981, § 11-721(a)(1-3). *Howard University v. Poggi-Asamani*, 488 A.2d 1350, 1985 D.C. App. LEXIS 337 (1985).

Order of superior court commissioner which dismissed information and which was not approved by trial judge was not a "final order," despite fact that trial judge stated that no approval was required, and thus, Court of Appeals lacked jurisdiction over appeal from the order. D.C. Code 1981, §§ 11-721(a), 11-1732, 11-1732(c); Criminal Rules 12(b), 117, 117(c). *District of Columbia v. Eck*, 476 A.2d 687, 1984 D.C. App. LEXIS 406 (1984).

Final orders, for purposes of appeal, are not limited to final judgments to terminate action. D.C. Code 1981, § 11-721(a). *Kleiboemer v. District of Columbia*, 458 A.2d 731, 1983 D.C. App. LEXIS 335 (1983), writ of certiorari denied by 465 U.S. 1024, 104 S. Ct. 1279, 79 L. Ed. 2d 683, 1984 U.S. LEXIS 1077, 52 U.S.L.W. 3610 (1984) *supra*.

For purposes of review, an order is final and appealable only if it disposes of the whole case on its merits so that court has nothing remaining to do but to execute judgment or decree already rendered. D.C. Code 1981, § 11-721(a)(1). *Urciolo v. Urciolo*, 449 A.2d 287, 1982 D.C. App. LEXIS 401 (1982).

Trial court's order denying request for costs on appeal as premature was not final order or collateral order from which appeal could be taken. D.C. Code 1981, § 11-721. *Mills v. Cosmopolitan Ins. Agency*, 442 A.2d 151, 1982 D.C. App. LEXIS 296 (1982).

For purposes of review, order is "final" only if it disposes of whole case on its merits so that court has nothing remaining to do but to execute judgment or decree already rendered. D.C. Code 1981, § 11-721. *Mills v. Cosmopolitan Ins.*

Agency, 442 A.2d 151, 1982 D.C. App. LEXIS 296 (1982).

Where protective order was strictly preliminary safeguard for parties and integrity of judicial process, and maintained only amount in dispute in registry and passed through to landlord the undisputed rent, order was not appealable as a "final order." D.C. Code § 11-721(a)(1). *Dameron v. Capitol House Associates Ltd. Partnership*, 431 A.2d 580, 1981 D.C. App. LEXIS 300 (1981).

Under statute giving District of Columbia Court of Appeals jurisdiction over all final orders and judgments of superior court, final order must dispose of entire case on merits and leave nothing remaining but execution of judgment. D.C. Code § 11-721(a)(1). *Dameron v. Capitol House Associates Ltd. Partnership*, 431 A.2d 580, 1981 D.C. App. LEXIS 300 (1981).

Denial of motion to dismiss is not final order, and thus is not appealable. D.C. Code § 11-721(a)(1), (d). *Crown Oil & Wax Co. v. Safeco Ins. Co.*, 429 A.2d 1376, 1981 D.C. App. LEXIS 271 (1981).

Collateral nature of an order is not a sufficient basis for finality, for otherwise all orders to nonparty witnesses would be appealable. D.C. Code § 11-721(a)(1). *United States v. Harrod*, 428 A.2d 30, 1981 D.C. App. LEXIS 225 (1981).

For purposes of statute limiting Court of Appeals' jurisdiction to final orders and judgments, final orders are not limited to final judgments which terminate an action. D.C. Code 1973, § 11-721(a). *United States v. Harrod*, 411 A.2d 1383, 1980 D.C. App. LEXIS 248 (1980).

In determining finality of order or judgment for purposes of appeal, court takes into consideration not only those interests of the immediate parties but, more particularly, those interests which pertain to the smooth functioning of the judicial system. D.C. Code § 11-721(a)(1). *Trilon Plaza Co. v. Allstate Leasing Corp.*, 399 A.2d 34, 1979 D.C. App. LEXIS 302 (1979).

To be reviewable, judgment or decree must not only be final but also complete, that is, final not only as to all parties, but as to the whole subject matter and all causes of action involved. D.C. Code § 11-721(a)(1). *Trilon Plaza Co. v. Allstate Leasing Corp.*, 399 A.2d 34, 1979 D.C. App. LEXIS 302 (1979).

In determining which order of trial court is final and thus appealable, general rule is that order stating the sanction, quantum of relief, or the like is the one with the requisite finality. D.C. Code § 11-721(a)(1). *Trilon Plaza Co. v. Allstate Leasing Corp.*, 399 A.2d 34, 1979 D.C. App. LEXIS 302 (1979).

An order requiring a party to appear and show cause why he should not be held in contempt for his noncompliance with prior court order is not a final order and is therefore

not appealable. D.C. Code § 11-721(a)(1). *Eisenberg v. Eisenberg*, 357 A.2d 396, 1976 D.C. App. LEXIS 274 (1976).

An order of dismissal on grounds of forum non conveniens is clearly a final order and is properly appealable. D.C. Code § 11-721(a). *Frost v. Peoples Drug Store, Inc.*, 327 A.2d 810, 1974 D.C. App. LEXIS 302 (1974).

Trial court's denial of pretrial motion for dismissal on grounds of forum non conveniens is a final order and appealable. D.C. Code § 11-721(a). *Frost v. Peoples Drug Store, Inc.*, 327 A.2d 810, 1974 D.C. App. LEXIS 302 (1974).

The term "final orders" for purposes of statute governing appellate jurisdiction is not limited to final judgments which terminate an action. D.C. Code § 11-721(a). *Frost v. Peoples Drug Store, Inc.*, 327 A.2d 810, 1974 D.C. App. LEXIS 302 (1974).

— Landlord-tenant actions, final orders.

Trial court's order denying tenant's motion to vacate consent order executed with landlord and to dismiss landlord's underlying suit for possession, brought on asserted basis of having met payment terms of consent order, was a final order and hence appealable by tenant, though landlord had not subsequently sought writ of restitution and eviction of tenant to which it was entitled, where trial judge, having adopted landlord's contention that tenant failed to comply with payment schedule in consent order, denied tenant its remedy for satisfaction of consent order, and where the only remaining procedure in the trial court was the ministerial one of issuing, without further order of the court, a writ of restitution. D.C. Code 1981, § 11-721(a)(1). *Camalier & Buckley, Inc. v. Sandoz & Lamberton, Inc.*, 667 A.2d 822, 1995 D.C. App. LEXIS 223 (1995).

Denial of tenant's oral motion to set aside eviction was not final appealable order where action was taken outside of landlord's presence, where decision did not address merits of tenant's claim, and where trial court subsequently considered written submissions of both parties. D.C. Code 1981, § 11-721(a)(1). *Gause v. C.T. Management*, 637 A.2d 434, 1994 D.C. App. LEXIS 19 (1994).

— Medical-related appeals, final orders.

Order denying patients' motions to dismiss civil recommitment petitions was not a final, appealable order; issue of whether patients were a danger to themselves or others due to their purported mental illnesses was never reached by the trial court, so the cases were not decided on the merits. In re *Brown*, 974 A.2d 884, 2009 D.C. App. LEXIS 242 (2009).

Order denying patients' motions to dismiss civil recommitment petitions was not functional equivalent of a denial of a writ of habeas

corpus, as required to show that denial of patients' motions was a final, appealable order; patients did not request their release, the relief for which writ was intended. *In re Brown*, 974 A.2d 884, 2009 D.C. App. LEXIS 242 (2009).

Order of probate court vacating attorney's appointment as general conservator for patient and re-appointing attorney as special conservator in order to wind down government involvement in patient's affairs, following successful appeal by patient's niece, who had the power to make health care decisions for patient under patient's health care proxy, was a final order which patient's niece was required to appeal within 30 days, and thus Court of Appeals had no jurisdiction over niece's appeal of such order when niece's notice of appeal was filed 18 months later; under probate rules an order appointing a special conservator was a final order, and under its rules Court of Appeals lacked jurisdiction to consider an appeal of an order filed more than 30 days after the entry of the order being appealed. *In re Orshansky*, 952 A.2d 199, 2008 D.C. App. LEXIS 283 (2008).

Before expert testimony about the standard of care may be admitted, it must meet basic standards of competency and relevancy, and the grounded reference to a national standard is a requisite for any opinion regarding standard of care in a medical malpractice case. *Snyder v. George Washington Univ.*, 890 A.2d 237, 2006 D.C. App. LEXIS 5 (2006).

Orders committing individuals to hospital supervision pursuant to District of Columbia Hospitalization of the Mentally Ill Act were final for purposes of judicial review, since trial court committed patients to indeterminate course of involuntary treatment and in doing so disposed of cases on merits leaving court with nothing remaining to do but docket already issued orders. D.C. Code 1981, §§ 11-721(a)(1), 21-501 et seq. *In re Richardson*, 481 A.2d 473, 1984 D.C. App. LEXIS 457 (1984).

Trial court's written order directing that complaining witness in simple assault prosecution be examined by a psychiatrist was not a "final order" and thus Court of Appeals had no jurisdiction to entertain Government's appeal from that order. D.C. Code § 11-721(a)(1). *United States v. Harrod*, 428 A.2d 30, 1981 D.C. App. LEXIS 225 (1981).

Order entered in prosecution for simple assault compelling complaining witness to undergo psychiatric examination was final and appealable. D.C. Code 1973, § 11-721(a). *United States v. Harrod*, 411 A.2d 1383, 1980 D.C. App. LEXIS 248 (1980).

In absence of provision in the Hospitalization of the Mentally Ill Act limiting government's right of appeal, statute making reviewable all final orders of the superior court gives the government the right to appeal from an order releasing an allegedly mentally ill person from

custody. D.C. Code §§ 11-721, 21-501 et seq. *In re Lomax*, 367 A.2d 1272, 1976 D.C. App. LEXIS 444 (1976).

— Probation appeals, final orders.

Even if the appeal by testator's alleged common law wife, of the trial court's order dismissing as time-barred her renewed claims that the wills admitted to probate were forged and that she was testator's common law wife, were prematurely filed as appeals from nonfinal orders, the subsequent entry of a final judgment in the entire case had the effect of ripening the appeal, thereby giving the appellate court jurisdiction. *Valentine v. Elliott* (*In re Estate of Delaney*), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Order removing personal representative of estate and appointing successor personal representative was final order that was immediately appealable, though residuary beneficiaries subsequently filed motion to amend the order, where the motion requested only explanations of why there was good cause for removing personal representative and why personal representative's wife had not been appointed as his successor. *Valentine v. Elliott* (*In re Estate of Delaney*), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Personal representative of probate estate, after his removal from office, lacked standing to appeal probate court's appointment of successor personal representative; personal representative sustained no injury to his legal rights or to any legally protected relationship from appointment of successor personal representative. *Valentine v. Elliott* (*In re Estate of Delaney*), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Probation modification affects nature of sanction imposed and, therefore, is immediately appealable as "final order." D.C. Code 1981, § 11-721(a)(1). *Barnes v. United States*, 513 A.2d 249, 1986 D.C. App. LEXIS 394 (1986).

Order of probation had all necessary characteristics of finality to be appealable. D.C. Code 1981, § 11-721(a). *Mozingo v. United States*, 503 A.2d 1238, 1986 D.C. App. LEXIS 258 (1986).

— Summary judgment, final orders.

Trial court's refusal to grant a motion for summary judgment to tenant in action for possession of premises, based on tenant's failure to pay landlord requested amount of rent, was not a final, appealable order. *Edelin v. Campbell* (*In*

re Estate of Blackwell), 983 A.2d 320, 2009 D.C. App. LEXIS 576 (2009).

Because grant of summary judgment to one party was final judgment, and because such order was appealed, order denying summary judgment to adverse party was also appealable. *District of Columbia v. Helen Dwight Reid Educ. Found.*, 766 A.2d 28, 2001 D.C. App. LEXIS 11 (2001).

In action by building owners for declaratory and injunctive relief from zoning administrator's decision refusing to permit owners to convert apartment units into hotel units, superior court's denial of owners' motion for summary judgment was not final order within meaning of applicable statute, and thus appeal therefrom would be dismissed for want of jurisdiction. D.C. Code 1981, § 11-721. *Page Associates v. District of Columbia*, 463 A.2d 649, 1983 D.C. App. LEXIS 406 (1983).

— Zoning, final orders.

Order of Board of Zoning Adjustment (BZA) that ruled in favor of neighbor in appeal of issuance of permit by Department of Consumer and Regulatory Affairs (DCRA) that allowed property owners to build retaining wall was sufficiently "final" for Court of Appeals to review it, even though order mandated no specific relief; property owners were severely restricted in the use of their land by BZA's order and thus were aggrieved by order. *Economides v. D.C. Bd. of Zoning Adjustment*, 954 A.2d 427, 2008 D.C. App. LEXIS 373 (2008).

In general.

An order denying an attorney's motion to withdraw satisfies the conditions for being immediately appealable under the collateral order doctrine; the order conclusively determines the disputed question of whether the attorney can withdraw, the question of whether the lawyer must continue to work without pay or without the client's cooperation, or despite conflicts of interest, or without having the qualifications to provide competent representation, will usually be completely separate from merits of underlying action, and an erroneous denial cannot be rectified in an appeal at the end of the case. *Galloway v. Clay*, 861 A.2d 30, 2004 D.C. App. LEXIS 580 (2004).

To be immediately appealable under the collateral order doctrine, a trial court order must: (1) conclusively determine the disputed question; (2) resolve an important issue completely separate from the merits of the action; and (3) be effectively unreviewable on appeal from a final judgment. *Galloway v. Clay*, 861 A.2d 30, 2004 D.C. App. LEXIS 580 (2004).

A division of the Court of Appeals is required to follow a prior majority opinion of the Court of Appeals, rather than the concurring or dissenting opinion in the prior case. In *re Thomas-*

Pinkney, 840 A.2d 700, 2004 D.C. App. LEXIS 5 (2004).

Interlocutory orders denying class certification are not reviewable under the collateral order doctrine, for the issues they resolve are not completely separate from the merits of the action. *Ford v. Chartone, Inc.*, 834 A.2d 875, 2003 D.C. App. LEXIS 628 (2003), remanded by 908 A.2d 72, 2006 D.C. App. LEXIS 533 (D.C. 2006).

Consent of parties cannot enlarge Court of Appeals' jurisdiction. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

Where a substantial question exists as to the Court of Appeals' subject matter jurisdiction, it is the Court's obligation to raise it, sua sponte, even though no party has asked us to consider it. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

Under collateral order doctrine, orders which finally determine claims of right separable from, and collateral to, rights asserted in action that are too important to be denied review, and too independent of cause itself to require that appellate consideration be deferred until the whole case is adjudicated, are immediately appealable to Court of Appeals, even though they do not terminate the action in the trial court; otherwise such orders would be effectively unreviewable, and the rights at stake could be lost irreparably. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

A ruling on a motion to dismiss will qualify for immediate appellate review under the collateral order doctrine if it: (1) conclusively determines a disputed question of law; (2) resolves an important issue that stands completely separate from the merits of the case; and (3) is effectively unreviewable on appeal from a final judgment. *Heard v. Johnson*, 810 A.2d 871, 2002 D.C. App. LEXIS 656 (2002).

An order denying a motion to dismiss based on lack of subject matter jurisdiction that asserts an immunity from law suits is the type of ruling commonly found to meet the requirements of the collateral order doctrine and thus be immediately appealable, so long as the ruling turns on an issue of law rather than on a factual dispute. *Heard v. Johnson*, 810 A.2d 871, 2002 D.C. App. LEXIS 656 (2002).

Court of Appeals has jurisdiction, under the collateral order doctrine, to hear interlocutory appeal brought by church trustees, who appealed denial of their motion to dismiss defamation claim brought by pastor on grounds of lack of subject matter jurisdiction, where trustees based such claim on fact that they were entitled to immunity under the Free Exercise Clause of the First Amendment, and order denying trustees' immunity dealt with an issue that was utterly separate from merits of defamation claim. *Heard v. Johnson*, 810 A.2d 871, 2002 D.C. App. LEXIS 656 (2002).

To qualify for immediate appellate review under the collateral order doctrine, the ruling must satisfy three requirements: (1) it must conclusively determine a disputed question of law; (2) it must resolve an important issue that is separate from the merits of the case; and (3) it must be effectively unreviewable on appeal from a final judgment. *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 774 A.2d 332, 2001 D.C. App. LEXIS 129 (2001).

The denial of a motion that asserts an immunity from being sued is the kind of ruling that is commonly found to meet the requirements of the collateral order doctrine and thus be immediately appealable, so long as the ruling turns on an issue of law rather than on a factual dispute. *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 774 A.2d 332, 2001 D.C. App. LEXIS 129 (2001).

Under collateral order doctrine, Court of Appeals had jurisdiction over law firm's appeal from denial of its motion to dismiss, for failure to state claim, corporation's defamation action against firm, alleging that firm slandered corporation when firm solicited one of corporation's shareholders as client in order to bring potential shareholders' derivative or class action lawsuit against corporation; trial court conclusively determined (by rejecting) firm's claim of immunity under "judicial proceedings" privilege, issue of immunity from having to defend against defamation claim was separate from merits of that claim, and denial of absolute immunity was effectively unreviewable on appeal from final judgment, because by then purported entitlement not to stand trial or face other burdens of litigation would be lost irretrievably. *Finkelstein, Thompson & Loughran v. Hemispherx Biopharma, Inc.*, 774 A.2d 332, 2001 D.C. App. LEXIS 129 (2001).

Under "collateral order doctrine," interlocutory orders are appealable if they: (1) conclusively determine a disputed question of law; (2) resolve important issue separate from merits of case; and (3) are effectively unreviewable on appeal from a final judgment. *In re Ti B.*, 762 A.2d 20, 2000 D.C. App. LEXIS 265 (2000), remanded by 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (D.C. 2005).

Trial court's orders prohibiting father from conferring with his criminal defense counsel about Fifth Amendment privilege against self-incrimination and barring criminal defense counsel from courtroom while father asserted that privilege in neglect proceeding arising from disappearance of, and father's suspected murder of, children's mother, met requirements of collateral order doctrine and were immediately appealable; orders conclusively determined disputed questions of law, whether father had the right to share information and access with criminal defense counsel was an

important issue with constitutional dimensions and, as framed in case, was issue that was separate from merits of neglect proceeding, and orders were not effectively reviewable on appeal from a final judgment. *In re Ti B.*, 762 A.2d 20, 2000 D.C. App. LEXIS 265 (2000), remanded by 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (D.C. 2005).

District of Columbia Court of Appeals has jurisdiction over final orders and over certain interlocutory orders specified by statute, by court rule, and by the collateral order doctrine. D.C. Code 1981, § 11-721(a)(1-3); Civil Rule 54(b). *District of Columbia v. Simpkins*, 720 A.2d 894, 1998 D.C. App. LEXIS 219 (1998).

Court of Appeals has jurisdiction over final orders, and over certain interlocutory orders specified by statute, by court rule, and by collateral order doctrine. D.C. Code 1981, § 11-721(a)(1-3); Civil Rule 54(b). *Francis v. Recycling Solutions*, 695 A.2d 63, 1997 D.C. App. LEXIS 138 (1997).

Although it ordinarily reviews only final orders and judgments of superior court, Court of Appeals will treat certain interlocutory orders as final and collateral, and hence appealable, when they have final and irreparable effect on important rights of parties. D.C. Code 1981, § 11-721(a)(1). *Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith v. Beards*, 680 A.2d 419, 1996 D.C. App. LEXIS 144 (1996), writ of certiorari denied by 520 U.S. 1155, 117 S. Ct. 1335, 137 L. Ed. 2d 494, 1997 U.S. LEXIS 2117, 65 U.S.L.W. 3665 (1997).

Interlocutory or preliminary orders.

— Affecting possession of property, interlocutory or preliminary orders.

In appeal from trial court's order granting condemnor's motion for immediate possession, which order was appealable as an interlocutory order changing or affecting possession of property, appellate court would exercise pendent appellate jurisdiction over trial court's order granting condemnor's motion to strike condemnnee's defenses, which order ordinarily would not be immediately appealable; trial court explicitly linked its grant of immediate possession to its previous decision to strike the defenses, appellate court would be unable to meaningfully review the order transferring possession without considering the predicate decision to strike condemnnee's defenses, and record on appeal was adequate for review of order striking the defenses. *Franco v. Nat'l Capital Revitalization Corp.*, 930 A.2d 160, 2007 D.C. App. LEXIS 398 (2007).

Trial court's order granting condemnor's motion for immediate possession was an interlocutory order changing or affecting the possession of property, as basis for statutory appellate jurisdiction. *Franco v. Nat'l Capital Revitaliza-*

tion Corp., 930 A.2d 160, 2007 D.C. App. LEXIS 398 (2007).

Order, which ruled on estate and trustees' adverse possession claims and granted adjoining landowners an injunction prohibiting trustees from parking in easement, was interlocutory, for the purpose of limitations period for filing appeals, and thus the time for filing appeal of injunction order did not begin to run until final order was entered; order did not address adjoining landowners' claim that trustees tortiously interfered with landowners' use and enjoyment of their easement, or landowners' claim against estate for negligent misrepresentation. *Estate of Patterson v. Sharek*, 924 A.2d 1005, 2007 D.C. App. LEXIS 258 (2007).

Adjoining landowners' failure to appeal injunction within 30 days of entry of interlocutory order granting injunction did not preclude appeal challenging injunction; interlocutory appeals were permissive and not mandatory, and adjoining landowner timely filed an appeal of injunction after final order addressing all issues between the parties was entered. *Estate of Patterson v. Sharek*, 924 A.2d 1005, 2007 D.C. App. LEXIS 258 (2007).

Trial court's order granting vendor possession of real property that was in possession of purchaser under installment land contract was order changing or affecting possession of property and, thus, was appealable interlocutory order. D.C. Code 1981, § 11-721(a)(2)(C). *Williams v. Dudley Trust Found.*, 675 A.2d 45, 1996 D.C. App. LEXIS 70 (1996).

Although interlocutory orders generally are not appealable, if order changes status quo regarding possession of property, it is appealable. D.C. Code 1981, § 11-721(a)(2)(C). *Williams v. Dudley Trust Found.*, 675 A.2d 45, 1996 D.C. App. LEXIS 70 (1996).

Order granting partial summary judgment was appealable pursuant to exception for appeals from orders "changing or affecting possession of real property," where order transferred possession of property from its owners and placed it under control of a trustee to manage, to collect rents and profits, and to sell; moreover, order finally resolved nature and extent of each party's interest in the property. D.C. Code 1981, § 11-721(a)(2)(C). *Lynn v. Lynn*, 617 A.2d 963, 1992 D.C. App. LEXIS 311 (1992).

Court of Appeals had jurisdiction of appeal from protective order issued in landlord's possessory action against tenant three weeks prior to Court of Appeal's decision in *McQueen v. Lustine Realty Co., Inc.*, in which Court of Appeals determined that protective orders in Landlord and Tenant Branch are appealable interlocutorily. D.C. Code 1981, § 11-721(a)(2)(A). *LaPrade v. Liebler*, 614 A.2d 546, 1992 D.C. App. LEXIS 263 (1992).

Order vacating default judgment against landlord and effectively restoring tenant to

possession of premises was appealable, interlocutory order. D.C. Code 1981, § 11-721(a)(1)(C). *Frank Emmet Real Estate, Inc. v. Monroe*, 562 A.2d 134, 1989 D.C. App. LEXIS 145 (1989).

To fall within the "affecting property" exception to nonappealability of nonfinal orders, order must change the status quo between the landlord and tenant. D.C. Code 1981, § 11-721(a)(2)(C). *Hagner Management Corp. v. Lawson*, 534 A.2d 343, 1987 D.C. App. LEXIS 503 (1987).

In action by vendors against purchasers on first deed of trust and purchase money note, grant of partial summary judgment which included grant of possession to vendors was immediately appealable under D.C. Code 1981, § 11-721(a)(2)(C). *Word v. Ham*, 495 A.2d 748, 1985 D.C. App. LEXIS 441 (1985).

To fall within exception as an appealable order "changing or affecting a possession of property", an order must change the status quo. D.C. Code § 11-721(a)(2)(C). *Jenkins v. Parker*, 428 A.2d 367, 1981 D.C. App. LEXIS 235 (1981).

Denial of motion to dismiss action seeking both possession of certain leased premises and a money judgment for back rent on ground that court had no jurisdiction to render money judgment because no personal service had been made was not appropriate for interlocutory appeal. D.C. Code § 11-721(d). *Plunkett v. Gill*, 287 A.2d 543, 1972 D.C. App. LEXIS 344 (1972).

— In general.

Statute requiring the superior court to conduct its business according to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure does not grant authority for rule allowing the Court of Appeals to permit an appeal from an order of the superior court granting or denying class action certification, even if the superior court does not certify that the interlocutory order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation or case; the statute addresses only the conduct of business in the superior court, and the Court of Appeals' jurisdiction is not part of the business of the superior court. *Ford v. Chartone, Inc.*, 834 A.2d 875, 2003 D.C. App. LEXIS 628 (2003), remanded by 908 A.2d 72, 2006 D.C. App. LEXIS 533 (D.C. 2006).

Rule was void in allowing the Court of Appeals to permit an appeal from an order of the superior court granting or denying class action certification, even if the superior court does not certify that the interlocutory order involves a controlling question of law as to which there is substantial ground for a difference of opinion

and that an immediate appeal may materially advance the ultimate termination of the litigation or case; no statute authorized the rule. *Ford v. Chartone, Inc.*, 834 A.2d 875, 2003 D.C. App. LEXIS 628 (2003), remanded by 908 A.2d 72, 2006 D.C. App. LEXIS 533 (D.C. 2006).

The trial judge's certification that interlocutory order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation or case is an indispensable precondition for the Court of Appeals to exercise its discretion to allow an interlocutory appeal. *Ford v. Chartone, Inc.*, 834 A.2d 875, 2003 D.C. App. LEXIS 628 (2003), remanded by 908 A.2d 72, 2006 D.C. App. LEXIS 533 (D.C. 2006).

The trial judge's certification that interlocutory order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation or case is a jurisdictional condition and cannot be abrogated by rule allowing the Court of Appeals to permit an appeal from an order of the superior court granting or denying class action certification. *Ford v. Chartone, Inc.*, 834 A.2d 875, 2003 D.C. App. LEXIS 628 (2003), remanded by 908 A.2d 72, 2006 D.C. App. LEXIS 533 (D.C. 2006).

Interlocutory orders are appealable if they have a final and irreparable effect on important rights of parties. *In re Ti B.*, 762 A.2d 20, 2000 D.C. App. LEXIS 265 (2000), remanded by 878 A.2d 1255, 2005 D.C. App. LEXIS 390 (D.C. 2005).

If interlocutory order concerns injunction, or has practical effect of granting or refusing injunction, and imposes a sufficiently serious injury to justify an immediate appeal, order is appealable. *District of Columbia v. Eastern Trans-Waste of Md., Inc.*, 758 A.2d 1, 2000 D.C. App. LEXIS 192 (2000).

Court of Appeals had jurisdiction to entertain interlocutory appeals of order modifying and extending temporary restraining order and granting partial summary judgment for solid waste and recycling hauler as to solid waste facility charge, in hauler's action against District of Columbia, seeking declaratory, injunctive, and other relief concerning application and enforcement of Solid Waste Facility Permit Act and Illegal Dumping Enforcement Act. *District of Columbia v. Eastern Trans-Waste of Md., Inc.*, 758 A.2d 1, 2000 D.C. App. LEXIS 192 (2000).

An order denying recusal is interlocutory, and therefore, not appealable. D.C. Code 1981, § 11-721(a)(1). *Anderson v. United States*, 754 A.2d 920, 2000 D.C. App. LEXIS 136 (2000).

Trial court's certification of matter for interlocutory appeal in no way limits Court of Ap-

peals's power to independently determine suitability of interlocutory review statute to the litigation involved. D.C. Code 1981, § 11-721(d). *In re J.A.P.*, 749 A.2d 715, 2000 D.C. App. LEXIS 104 (2000).

Even when a motions division of Court of Appeals has allowed interlocutory appeal to proceed, division assigned to decide merits is not bound by that order if, after briefing and further consideration, it concludes that standards governing appeal under interlocutory review statute are not satisfied. D.C. Code 1981, § 11-721(d). *In re J.A.P.*, 749 A.2d 715, 2000 D.C. App. LEXIS 104 (2000).

Permission for interlocutory appeal of order refusing to appoint counsel and provide expert witness services for indigent birth mother at public expense was improvidently granted in contested adoption proceeding, where equal protection argument advanced by birth mother would have had no bearing on birth mother's case; birth mother's counsel, having accepted pro bono representation, intended to continue representing birth mother regardless of outcome of appeal, and trial judge had before him a report by court's Adoption Resources Branch evaluating background history of all parties to proceeding. U.S.C. Const. Amend. 14; D.C. Code 1981, § 11-721(d). *In re J.A.P.*, 749 A.2d 715, 2000 D.C. App. LEXIS 104 (2000).

Statute providing for interlocutory review was not intended merely to provide interlocutory review of difficult rulings in hard cases. D.C. Code 1981, § 11-721(d). *In re J.A.P.*, 749 A.2d 715, 2000 D.C. App. LEXIS 104 (2000).

If interlocutory appeals are to serve purpose for which they were intended, they must be used only when the alternative would mean greater delay and expense than would be caused by interlocutory review itself. D.C. Code 1981, § 11-721(d). *In re J.A.P.*, 749 A.2d 715, 2000 D.C. App. LEXIS 104 (2000).

Appellate court has jurisdiction over interlocutory orders changing or affecting possession of property. D.C. Code 1981, § 11-721(a)(2)(C). *Bowie v. Nicholson*, 705 A.2d 290, 1998 D.C. App. LEXIS 7 (1998).

Pendente lite award of child support and temporary alimony in divorce action did not alter, but rather maintained, status quo, and thus, trial court's order awarding such support were not appealable as interlocutory order changing or affecting possession of property. D.C. Code 1981, §§ 11-721(a)(2)(C), 16-911(a). *Bowie v. Nicholson*, 705 A.2d 290, 1998 D.C. App. LEXIS 7 (1998).

In order for interlocutory order to be treated as final and collateral and accordingly subject to appellate review, order must conclusively determine undisputed question, must resolve important issue completely separate from merits of action, and must be effectively unreviewable on appeal from final judgment. D.C. Code

1981, § 11-721(a)(1). Bible Way Church of Our Lord Jesus Christ of the Apostolic Faith v. Beards, 680 A.2d 419, 1996 D.C. App. LEXIS 144 (1996), writ of certiorari denied by 520 U.S. 1155, 117 S. Ct. 1335, 137 L. Ed. 2d 494, 1997 U.S. LEXIS 2117, 65 U.S.L.W. 3665 (1997).

Court of Appeals had jurisdiction of high school principal's interlocutory appeal from order denying his motion for summary judgment, which was based in part on assertion of qualified immunity against student's civil rights claim, under collateral order exception to general finality requirement. D.C. Code 1981, § 11-721(a)(1); 42 U.S.C. § 1983. *Durso v. Taylor*, 624 A.2d 449, 1993 D.C. App. LEXIS 92 (1993).

Trial court's grant of summary judgment against government in its suit to quiet title in property bid off to it in tax sale was properly appealed as interlocutory order changing or affecting possession of property, even though trial court had not ruled on allegation of wrongful eviction resulting from allegedly invalid tax sale. D.C. Code 1981, § 11-721(a)(2)(C). *District of Columbia v. Mayhew*, 601 A.2d 37, 1991 D.C. App. LEXIS 338 (1991), remanded by 672 A.2d 1075, 1996 D.C. App. LEXIS 31 (D.C. 1996).

Protective order which allowed maintenance of only amount in dispute in registry and passed through to landlord the undisputed rent was not an appealable interlocutory order. D.C. Code § 11-721(a)(2)(C). *Dameron v. Capitol House Associates Ltd. Partnership*, 431 A.2d 580, 1981 D.C. App. LEXIS 300 (1981).

Court of Appeals will not entertain interlocutory appeal from denial of motion to dismiss for lack of personal jurisdiction. D.C. Code § 11-721(a)(1), (d). *Crown Oil & Wax Co. v. Safeco Ins. Co.*, 429 A.2d 1376, 1981 D.C. App. LEXIS 271 (1981).

Denial of motion for summary judgment to dismiss complaint to enforce mechanic's lien, which was equivalent to motion to quash the attachment, was interlocutory order from which appeal could not be taken where trial court's order did not alter possession of the property in any way. D.C. Code § 11-721(a)(2)(C). *Jenkins v. Parker*, 428 A.2d 367, 1981 D.C. App. LEXIS 235 (1981).

One of standards against which case will be measured to determine if it can be classified as exceptional so as to warrant granting interlocutory appeal upon certification of trial court is whether alternative to interlocutory appeal would mean greater delay and expense than the interlocutory review itself. D.C. Code § 11-721(d). *Hewsen v. Lynch*, 343 A.2d 45, 1975 D.C. App. LEXIS 229 (1975).

Where, by terms of stipulation, retrial of original claim would be waived and case would be dismissed with prejudice if, after granting application for interlocutory appeal, the Dis-

trict of Columbia Court of Appeals ruled in favor of respondent, but if the court were to rule for applicants, the litigation would be protracted by necessity of trial on counterclaim and possibly a retrial of original claim as well, the stipulation did not meet requirement for interlocutory appeal that alternative to it would mean greater delay and expense than interlocutory review itself and application for permission to appeal must be denied. D.C. Code § 11-721(d); D.C. Code Court of Appeals Rules, rule 5(b). *Hewsen v. Lynch*, 343 A.2d 45, 1975 D.C. App. LEXIS 229 (1975).

Broad discretion of District of Columbia Court of Appeals to grant interlocutory appeals certified by trial court will only be exercised if case is exceptional. D.C. Code § 11-721(d). *Hewsen v. Lynch*, 343 A.2d 45, 1975 D.C. App. LEXIS 229 (1975).

Even though juvenile did not file notice of appeal from order denying application to reconsider order detaining him pending trial within two-day period provided for interlocutory appeals, appellate court had jurisdiction to review order by viewing it as final order, as to which such two-day limitation did not apply. D.C. Code §§ 11-721(a)(1), 16-2327, 16-2327(a, b), 22-504, 22-2801. *In re M.L. DEJ.*, 310 A.2d 834, 1973 D.C. App. LEXIS 380 (1973).

Before trial court may properly certify matter for interlocutory appeal, it must first be determined whether litigation is properly suited to application of interlocutory appeal statute and whether time required to make interlocutory review will be shorter than trial on the merits. D.C. Code § 11-721(d). *Plunkett v. Gill*, 287 A.2d 543, 1972 D.C. App. LEXIS 344 (1972).

Moot cases.

District of Columbia Court of Appeals would not review issue of competing authority between mayor and the District of Columbia Council in abstract context of challenge to Inspector General Qualifications Amendment Act, which did not involve decision by mayor that continued to have live consequences. *Cropp v. Williams*, 841 A.2d 328, 2004 D.C. App. LEXIS 35 (2004).

Although not bound strictly by the "case or controversy" requirements of Article III of the federal Constitution, the District of Columbia Court of Appeals does not normally decide moot cases. *Cropp v. Williams*, 841 A.2d 328, 2004 D.C. App. LEXIS 35 (2004).

Procedure, generally.

Court of Appeals would permit post-trial amendment of pleadings in breach of contract action to reflect homeowner's claim that home improvement contractor was unlicensed, though trial court might well have acted within its discretion in declining to entertain issue which had not previously been explicitly raised

in pretrial documents, as it was evident from trial court's opinion that question of whether contractor's lack of a license undermined contractor's position was tried on the merits, and that trial court's ruling rested on substantive, rather than procedural grounds. *Norried v. Caribbean Contrs., Inc.*, 899 A.2d 129, 2006 D.C. App. LEXIS 275 (2006).

The noting of a timely notice of appeal is mandatory and jurisdictional in the Court of Appeals. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Putative father, who did not request an evidentiary hearing, failed to preserve for appellate review claim that trial court should have held an evidentiary hearing before denying visitation with neglected minor child. In re *J.W.*, 806 A.2d 1232, 2002 D.C. App. LEXIS 533 (2002).

Trial court's factual findings are binding upon the Court of Appeals unless they are clearly erroneous; if the findings are acceptable, the Court of Appeals will not disturb the court's judgment unless it is plainly wrong or without evidence to support it. *Langon v. Reilly*, 802 A.2d 951, 2002 D.C. App. LEXIS 317 (2002).

Appeal of order granting summary judgment noted within thirty days of date order was actually docketed, and thus, appeal was timely even though the judgment and order were electronically filed more than 30 days preceding date on which appeal was noted. *Dobbins v. Burford*, 799 A.2d 389, 2002 D.C. App. LEXIS 299 (2002).

Time of service by itself is irrelevant to jurisdiction of the Court of Appeals, and an Administrative Order of the Superior Court does not alter the Court of Appeals' rules regarding the timely noting of an appeal. *Dobbins v. Burford*, 799 A.2d 389, 2002 D.C. App. LEXIS 299 (2002).

Mother abandoned her appeal of trial court's order, in child neglect proceedings, reducing the frequency of mother's visits with child placed in foster care to once a month, where mother failed to address the issue in either her appellate brief or in a reply brief. In re *K.M.T.*, 795 A.2d 688, 2002 D.C. App. LEXIS 80 (2002).

Court of Appeals abandoned doctrine of equitable balancing in connection with retroactivity analysis, and adopted firm rule of retroactivity; abrogating *Mendes v. Johnson*, 389 A.2d 781. *Davis v. Moore*, 772 A.2d 204, 2001 D.C. App. LEXIS 104 (2001).

Trial judge abused her discretion by failing to strike motorist's closing argument suggesting, without a factual predicate showing fraud or frivolous complaints, that, because of two prior claims, injured driver had motive to file personal injury suit against motorist. *Lewis v. Voss*, 770 A.2d 996, 2001 D.C. App. LEXIS 89 (2001).

Question of adequacy of service of process on one of several defendants in medical malpractice action should not have been certified for immediate appeal; that question was not one, lacking in precedent, which could be deemed controlling question likely to resolve overall litigation, and, over long term, that kind of appellate review would lead to disruption, delay, and erosion of judicial economy. *Medlantic Health Care Group, Inc. v. Cunningham*, 755 A.2d 1032, 2000 D.C. App. LEXIS 160 (2000).

Party dissatisfied with action of trial court after case remand can only obtain review in appellate court by filing new notice of appeal, once final order or judgment is entered. D.C. Code 1981, § 11-721. *Bell v. United States*, 676 A.2d 37, 1996 D.C. App. LEXIS 80 (1996).

Appeal following case remand is new appeal, separate from previous appeal that was terminated when case was remanded. D.C. Code 1981, § 11-721. *Bell v. United States*, 676 A.2d 37, 1996 D.C. App. LEXIS 80 (1996).

Notice of appeal must designate judgment, order, or part thereof from which appeal is taken as appeals may jurisdictionally be taken only from final judgments and orders and in litigation two or more potentially appealable orders may be entered. Court of Appeals Rule 3(a); D.C. Code 1981, § 11-721. *Perry v. Sera*, 623 A.2d 1210, 1993 D.C. App. LEXIS 116 (1993).

On appeal from trial court's ruling that it lacked jurisdiction to consider wife's motion to reduce support arrearages to judgment, husband's arguments which were not raised initially at trial could not be considered. D.C. Code 1981, § 11-721(a)(1). *Clark v. Clark*, 485 A.2d 621, 1984 D.C. App. LEXIS 578 (1984).

When it appears that litigation in trial court will have to be suspended pending outcome of an interlocutory appeal of right, the better practice is usually to seek leave to appeal from any other interlocutory ruling which involves a controlling question of law as to which there is substantial ground for a difference of opinion; the two appeals can then be consolidated, and the controlling question of law can be resolved expeditiously by reviewing court before trial. D.C. Code 1981, § 11-721(c). *Asch v. Taveres*, 467 A.2d 976, 1983 D.C. App. LEXIS 508 (1983).

Where time for filing notice of appeal expired on October 12, 1976 without any notice of appeal having been received, District of Columbia Court of Appeals had no jurisdiction to review, despite affidavit of counsel that he had mailed notice on morning of October 6, 1976, from main post office in Winston-Salem, North Carolina. D.C. Code Court of Appeals Rules, rule 4, pt.II(b)(1, 3); Fed.Rules Crim.Proc. rule 37(a)(2), 18 U.S.C.; Fed.Rules App.Proc. rules 4(b), 26(b), 18 U.S.C.; D.C. Code § 11-721(e).

Brown v. United States, 379 A.2d 708, 1977 D.C. App. LEXIS 259 (1977).

Standard of review.

In evaluating whether error affected substantial rights, the standard used by appellate court is whether, when all is said and done,

appellate court can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. *Jenkins v. Strauss*, 931 A.2d 1026, 2007 D.C. App. LEXIS 552 (2007).

§ 11-722. Administrative orders and decisions.

The District of Columbia Court of Appeals has jurisdiction (1) except as provided in clause (2), to review orders and decisions of the Commissioner [Mayor] of the District of Columbia, the District of Columbia Council, any agency of the District of Columbia (including the Board of Zoning Adjustment of the District of Columbia and the Zoning Commission of the District of Columbia), and the District of Columbia Redevelopment Land Agency, in accordance with the District of Columbia Administrative Procedure Act (D.C. Official Code, secs. 2-501 — 2-510); and (2) to review orders and decisions of the Public Service Commission of the District of Columbia in accordance with section 8 of the Act of March 4, 1913 (D.C. Official Code, Chapters 1 through 11, Title 34).

(July 29, 1970, 84 Stat. 481, Pub. L. 91-358, title I, § 111.)

Cross references. — District Charter provisions relating to jurisdiction of Court of Appeals, see § 1-204.31.

Section references. — This section is referred to in §§ 17-303 and 17-307.

Prior Codifications. — 1981 Ed., § 11-722. 1973 Ed., § 11-722.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

CASE NOTES

ANALYSIS

Adjudicatory nature of hearing.
Alcohol.
Contested cases.
Denial and withholding of hearing.
Discrimination cases.
Elections.
Electricity.
Housing.
In general.
Medicine and related fields.
Public service commissions.
Zoning.

Adjudicatory nature of hearing.

To meet jurisdictional requirement that Court of Appeals review only decisions and orders of District of Columbia agencies rendered in “contested cases,” hearings must be

adjudicatory rather than legislative in nature. D.C. Code 1981, § 11-722. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

Absent explicit or implicit statutory requirement of any hearing at all, fact that proceeding may involve primarily adjudicative facts will not make it contested case for purposes of permitting direct review under Administrative Procedure Act (APA). D.C. Code 1981, § 11-722. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

When hearing is provided for, but type of hearing is in doubt, analysis of nature of issues as adjudicatory or rulemaking may be determinative of whether decision arose out of contested case so as to permit judicial review under Administrative Procedure Act (APA). D.C. Code 1981, § 11-722. *United States v. District of*

Columbia Bd. of Zoning Adjustment, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

Taxicab Commission's emergency order increasing rates did not arise from contested case and thus was not subject to judicial review; even if contesting party did not receive trial-type hearing to which it was entitled, order involved policy decision directed toward general public rather than adjudication of rights of specific parties. D.C. Code 1981, § 1-1502(8). Communication Workers of America, Local 2336 v. District of Columbia Taxicab Com., 542 A.2d 1221, 1988 D.C. App. LEXIS 130 (1988).

Alcohol.

Court of Appeals had jurisdiction to consider a petition to review decision of the District of Columbia Housing Authority (DCHA) terminating recipient's eligibility for housing subsidies under the Tenant Assistance Program (TAP), based on allegation that she fraudulently under-reported her income in order to obtain more assistance; Court had jurisdiction to review contested cases, and DCHA's decision was made in a trial-type hearing required by the Constitution. *Powell v. D.C. Hous. Auth.*, 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

Petitioner who complained that nightclub violated Alcohol Beverage Control Act, related regulations, and his constitutional rights when it excluded him for his failure to present identification proving he was 21 years of age or older did not have statutory or constitutional right to hearing before Alcoholic Beverage Control Board and, therefore, did not have any right of judicial review of Board's decision. D.C. Code 1981, §§ 1-1502(8), 1-1510(a), 11-722, 25-106, 25-121. *Jones v. District of Columbia Alcoholic Beverage Bd.*, 621 A.2d 385, 1993 D.C. App. LEXIS 54 (1993).

Contested cases.

Court of Appeals must conduct the identical review of the Office of Employee Appeals' (OEA) decision that Court would undertake if appeal had been heard initially in Court. *Harding v. D.C. Office of Empl. Appeals*, 887 A.2d 33, 2005 D.C. App. LEXIS 636 (2005).

To uphold the decision of an administrative agency in a contested case under the Administrative Procedure Act, (1) the decision must state findings of fact on each material, contested factual issue, (2) those findings must be based on substantial evidence, and (3) the conclusions of law must follow rationally from the findings. *Powell v. D.C. Hous. Auth.*, 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

Court of Appeals' jurisdiction to hear a petition to review a decision by an administrative agency is limited to contested cases. *Powell v. D.C. Hous. Auth.*, 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

When Congress legislates that certain types of agency actions shall not have contested case status, those cases are not proper subject of direct appellate jurisdiction. D.C. Code 1981, § 11-722. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

If analysis reveals that party who claimed that she was erroneously denied contested case hearing by administrative agency was not entitled to contested case hearing, Court of Appeals must dismiss appeal of agency's order for lack of jurisdiction. D.C. Code 1981, § 1-1501 et seq. *Timus v. District of Columbia Dep't of Human Rights*, 633 A.2d 751, 1993 D.C. App. LEXIS 273 (1993).

Ordinarily, Court of Appeals has direct review jurisdiction not only when contested case hearing before administrative agency has taken place, but also when party has made effort to obtain contested case hearing which agency erroneously denied. D.C. Code 1981, § 1-1501 et seq. *Timus v. District of Columbia Dep't of Human Rights*, 633 A.2d 751, 1993 D.C. App. LEXIS 273 (1993).

Proceeding before prison housing board which resulted in prisoner being transferred to maximum security facility was not a contested case subject to review under the Administrative Procedure Act. D.C. Code 1981, §§ 1-1510(a), 11-722. *Singleton v. District of Columbia Dep't of Corrections*, 596 A.2d 56, 1991 D.C. App. LEXIS 225 (1991).

Court of Appeals has jurisdiction to review order or decision of mayor or agency only in contested case. D.C. Code 1981, §§ 1-1510(a), 11-722. *Jones & Artis Constr. Co. v. District of Columbia Contract Appeals Bd.*, 549 A.2d 315, 1988 D.C. App. LEXIS 208 (1988).

Direct review of administrative agency orders is limited, in absence of statutory provision permitting review, to contested cases, i.e., where agency proceeding determines legal rights, duties or privileges of specific parties, and where proceeding below was trial-type hearing required by law. D.C. Code 1981, § 1-1502(8). *Communication Workers of America, Local 2336 v. District of Columbia Taxicab Com.*, 542 A.2d 1221, 1988 D.C. App. LEXIS 130 (1988).

Where neither language, structure, nor history of statute shows intent to impose requirement of any kind of hearing before administrative action, fact that proceeding may involve primarily adjudicative fact will not make it "contested case" subject to judicial review. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

District of Columbia Historic Preservation Review Board proceeding to determine whether landowner's properties should be designated as

historic landmarks was not "contested case," and thus, Court of Appeals had no jurisdiction to review Board's order designating properties as landmarks; no administrative hearing on matter was either statutorily or constitutionally compelled. D.C. Code 1981, §§ 1-1502(8), 1-1510(a). *Donnelly Associates v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 1987 D.C. App. LEXIS 270 (1987).

For a proceeding to constitute a "contested case" within meaning of Administrative Procedure Act, a specific statute or the Constitution must entitle a person to a hearing concerning the legal rights of the parties. D.C. Code 1981, § 1-1502(8). *District of Columbia v. Douglass*, 452 A.2d 329, 1982 D.C. App. LEXIS 464 (1982).

A matter retains its status as a "contested case" within meaning of Administrative Procedure Act even if there are no disputed adjudicative facts necessitating a hearing. D.C. Code 1981, § 1-1502(8). *District of Columbia v. Douglass*, 452 A.2d 329, 1982 D.C. App. LEXIS 464 (1982).

District of Columbia Council has authority to, and intended to create an exception to contested case review by the Court of Appeals under the District of Columbia Administrative Procedure Act for certain cases adjudicated under the Traffic Adjudication Act; therefore, even though the adjudicative nature of such proceedings was functionally consistent with the general definition of a contested case, there was no conflict between the Traffic Adjudication Act and the District of Columbia Administrative Procedure Act. D.C. Code 1973, § 40-603(i); D.C. Code 1978 Supp. §§ 1-121 et seq., 1-147(a)(1), 1-1501 et seq.; D.C. Code 1980 Supp. § 4-1101 et seq. *District of Columbia v. Sullivan*, 436 A.2d 364, 1981 D.C. App. LEXIS 377 (1981).

Where there was no "contested case" within the meaning of the District of Columbia Administrative Procedure Act and no congressional organic act granting jurisdiction and since the council of the District of Columbia could not expand the traditional jurisdictional grant to encompass noncontested cases, the District of Columbia Court of Appeals did not have direct review jurisdiction over determination made pursuant to the historic sites subdivision amendment that a proposed subdivision would not be contrary to the public interest and should not be delayed. D.C. Code §§ 1-147(a)(4), 11-101 et seq., 11-722. *Capitol Hill Restoration Soc. v. Moore*, 410 A.2d 184, 1979 D.C. App. LEXIS 531 (1979).

Under the section of the District of Columbia Code which authorizes the District of Columbia Court of Appeals to review agency action in accordance with the District of Columbia Administrative Procedure Act, the Court of Ap-

peals has jurisdiction to review directly only agency action that is taken in a contested case. D.C. Code §§ 1-1502(8), 1-1510, 11-722. *Capitol Hill Restoration Soc. v. Moore*, 410 A.2d 184, 1979 D.C. App. LEXIS 531 (1979).

District of Columbia Court of Appeals is able to review directly only agency decisions or orders entered in contested cases. D.C. Code § 1-1501 et seq. *O'Neill v. District of Columbia Office of Human Rights*, 355 A.2d 805, 1976 D.C. App. LEXIS 521 (1976).

A proceeding before District of Columbia Council may be a "contested case" within District of Columbia Administrative Procedure Act and, if it is, an order resulting therefrom is directly reviewable in Court of Appeals. D.C. Code §§ 1-1501 to 1-1510, 7-123, 7-124, 7-401, 7-405, 11-722. *Chevy Chase Citizens Asso. v. District of Columbia Council*, 307 A.2d 740, 1973 D.C. App. LEXIS 413 (1973), vacated by 309 A.2d 97 (D.C. 1973).

Where multiple citizens groups, at least some of which apparently included nearby property owners and users of street, vigorously opposed closing of street, hearing was required under Street Readjustment Act, closing of particular street and reversion of title thereto to abutting property owners determined legal rights, duties, or privileges of specific parties and factual questions before Council on its consideration of whether to close the street were adjudicative rather than legislative in nature, proceeding should have been treated as a "contested case" under District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 to 1-1510, 7-123, 7-124, 7-401, 7-405, 11-722. *Chevy Chase Citizens Asso. v. District of Columbia Council*, 307 A.2d 740, 1973 D.C. App. LEXIS 413 (1973), vacated by 309 A.2d 97 (D.C. 1973).

Denial and withholding of hearing.

In deciding whether alleged victim of housing discrimination was erroneously denied contested case hearing by Office of Human Rights (OHR), Court of Appeals would exercise jurisdiction necessary to decide whether contested case hearing was improperly withheld. *Timus v. District of Columbia Dep't of Human Rights*, 633 A.2d 751, 1993 D.C. App. LEXIS 273 (1993).

Discrimination cases.

Court of Appeals lacked contested case jurisdiction to review application of Office of Human Rights (OHR) rule which provided that discrimination complaints could be dismissed if complainant refused make-whole relief offered in conciliation to individual cases. *Timus v. District of Columbia Dep't of Human Rights*, 633 A.2d 751, 1993 D.C. App. LEXIS 273 (1993).

A discriminatory employment practices proceeding brought by a District of Columbia employee is not a "contested case" within meaning

of the Administrative Procedure Act, and hence, is not subject to direct review by District of Columbia Court of Appeals; following enactment of Equal Employment Opportunity Act of 1972 to include government employees a District employee has the right to bring a civil action in federal court following pursuit of his administrative remedies through the appropriate local and federal commissions. D.C. Code §§ 1-1501 et seq., 1-1502(8); Civil Rights Act of 1964, §§ 701 et seq., 703, 706(a, b, e) as amended 42 U.S.C. §§ 2000e et seq., 2000e-5(b, c), (f)(1). *O'Neill v. District of Columbia Office of Human Rights*, 355 A.2d 805, 1976 D.C. App. LEXIS 521 (1976).

Elections.

Court of Appeals' jurisdiction to review election is independent of general jurisdiction to review orders and decisions of public agencies, and thus it is not subject to the usual Administrative Procedure Act limitation on jurisdiction to review of contested cases. D.C. Code 1981, §§ 1-1315(b), 11-722. *Scolaro v. District of Columbia Bd. of Elections & Ethics*, 691 A.2d 77, 1997 D.C. App. LEXIS 39 (1997).

Court of Appeals lacked jurisdiction to hear direct appeal from decision of Board of Elections and Ethics denying petitioner's challenge to qualifications of prospective candidate for council seat on residency grounds filed before Board finally determined candidate's eligibility. D.C. Code 1981, §§ 1-225, 1-1502(8), 1-1510(a), 11-722. *Lawrence v. District of Columbia Bd. of Elections & Ethics*, 611 A.2d 529, 1992 D.C. App. LEXIS 197 (1992).

Court of Appeals lacked jurisdiction to consider candidate's petition to set aside election for advisory neighborhood commissioner for single member district, as result of candidate's failure to file petition within seven days of certification of election by Board of Elections and Ethics, absent any record basis upon which it could reasonably be concluded that candidate was misled by Board as to certification date or that candidate or his counsel was unaware of certification until after seven-day period had expired; candidate asserted, without providing appropriate affidavit, that unnamed employee of Board misinformed him as to certification date. D.C. Code 1981, §§ 1-257, 1-258, 1-260(a), 1-268(a, b), 1-1315(b). *White v. District of Columbia Bd. of Elections & Ethics*, 537 A.2d 1133, 1988 D.C. App. LEXIS 45 (1988).

Electricity.

Judicial review of basic ratemaking principles with respect to marginal cost base, time of day pricing adopted by Public Service Commission for large demand customers of electric utility, without considering specific TOD rates, would not impermissibly interfere with administrative decision-making process and was ap-

propriate given fact that issue was fit for judicial decision and that parties would suffer hardship without judicial review. *Metropolitan Washington Bd. of Trade v. Public Service Com.*, 432 A.2d 343, 1981 D.C. App. LEXIS 293 (1981).

Where Public Service Commission had not issued any final order or decision in case involving application by electric utility for rate increase, People's Counsel could not appeal Commission orders excluding testimony submitted by People's Counsel out of time, since Commission's evidentiary rulings did not irrevocably deprive People's Counsel or general public of any rights, and there was no indication that normal appellate review would be unable to vindicate rights of any parties which might be adversely affected by Commission's evidentiary rulings. D.C. Code §§ 11-722, 43-705. *People's Counsel of District of Columbia v. Public Service Com.*, 414 A.2d 516, 1980 D.C. App. LEXIS 270 (1980).

Housing.

Landlord failed to preserve for appellate review his claim that he was lulled into believing that he could file his appeal of the Rental Housing Commission's (RHC) dismissal order after business hours on the tenth and final day of the limitations period for filing an appeal and it would be considered timely, in tenant's action to recover rent charged in excess of lawful rent ceiling, where counsel for landlord failed to raise the lulling doctrine before the RHC, and the record did not contain a motion for reconsideration or affidavit that challenged the RHC's decision under the lulling doctrine. *Kamerow v. D.C. Rental Hous. Comm'n*, 891 A.2d 253, 2006 D.C. App. LEXIS 22 (2006).

The Rental Housing Commission's (RHC) requirement that a notice of appeal be filed with its office no later than 4:30 p.m. on the last day of the ten-day limitations period in order to be considered timely was not unreasonable or arbitrary, even though landlord argued that there was no after-hours filing system; the municipal regulations provided that the office of the commission would be open daily from 8:30 a.m. to 4:30 p.m. except Saturdays, Sundays, and legal holidays, and that the receipt of a pleading that was not timely filed did not constitute a waiver of the filing requirements. *Kamerow v. D.C. Rental Hous. Comm'n*, 891 A.2d 253, 2006 D.C. App. LEXIS 22 (2006).

The Court of Appeals had jurisdiction to review landlord's appeal of the Rental Housing Commission (RHC) order dismissing as untimely his appeal of department of consumer and regulatory affairs (DCRA) order, which found in favor of tenants in their action to recover rent charged in excess of lawful rent ceiling, where landlord filed his appeal within the 30-day deadline governing petitions for

review of agency orders. *Kamerow v. D.C. Rental Hous. Comm'n*, 891 A.2d 253, 2006 D.C. App. LEXIS 22 (2006).

Court of Appeals had jurisdiction to consider a petition to review decision of the District of Columbia Housing Authority (DCHA) terminating recipient's eligibility for housing subsidies under the Tenant Assistance Program (TAP), based on allegation that she fraudulently under-reported her income in order to obtain more assistance; Court had jurisdiction to review contested cases, and DCHA's decision was made in a trial-type hearing required by the Constitution. *Powell v. D.C. Hous. Auth.*, 818 A.2d 188, 2003 D.C. App. LEXIS 132 (2003).

Superior court rather than District of Columbia Court of Appeals had jurisdiction to review Housing Rent Commission's decision affirming order allowing landlord to increase rents charged at apartment building so as to insure return on investment. D.C. Code §§ 1-147(4), 1-1510, 11-921, 45-1625. *Columbia Realty Venture v. District of Columbia Housing Rent Com.*, 350 A.2d 120, 1975 D.C. App. LEXIS 287 (1975).

District of Columbia Court of Appeals was without jurisdiction to review refusal of Housing Rent Commission to grant hearing on applications of landlord asking that he be allowed to pass increased costs of operating property through to tenants, and review thereof would be in the superior court. D.C. Code § 45-1625. *Columbia Realty Venture v. District of Columbia Housing Rent Com.*, 350 A.2d 120, 1975 D.C. App. LEXIS 287 (1975).

District of Columbia Court of Appeals was without jurisdiction to review Housing Rent Commission's voiding of hearing examiner's order allowing increased cost of operating property to be passed through to tenants due to landlord's failure to serve order on parties and Commission within 45 days after decision; review thereof would be in the superior court. D.C. Code § 45-1625. *Columbia Realty Venture v. District of Columbia Housing Rent Com.*, 350 A.2d 120, 1975 D.C. App. LEXIS 287 (1975).

In general.

As a general matter, appellate court has jurisdiction to review only agency orders or decisions that are final. D.C. Dep't of Empl. Servs. v. *Vilche*, 934 A.2d 356, 2007 D.C. App. LEXIS 556 (2007).

The "exhaustion of remedies doctrine" is distinguishable from the doctrine of primary jurisdiction; the "primary jurisdiction" rule comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body, and in such a case the judicial process is suspended pending referral of such issues to the

administrative body for its views. *Davis & Assocs. v. Williams*, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

The requirement to exhaust administrative remedies is not a rule of jurisdiction. *Davis & Assocs. v. Williams*, 892 A.2d 1144, 2006 D.C. App. LEXIS 83 (2006).

Court may invalidate agency action only if it is unsupported by substantial evidence, or if it is arbitrary, capricious, or an abuse of discretion. *Harding v. D.C. Office of Empl. Appeals*, 887 A.2d 33, 2005 D.C. App. LEXIS 636 (2005).

A validly promulgated agency regulation generally has the force of law. *Harding v. D.C. Office of Empl. Appeals*, 887 A.2d 33, 2005 D.C. App. LEXIS 636 (2005).

To establish direct review jurisdiction in Court of Appeals over administrative determination, petitioner must overcome two obstacles: administrative hearing must be either statutorily or constitutionally compelled, and hearing must be adjudicatory rather than legislative in nature. D.C. Code 1981, § 1-1501 et seq. *Timus v. District of Columbia Dep't of Human Rights*, 633 A.2d 751, 1993 D.C. App. LEXIS 273 (1993).

Some agency action, including dismissal of discrimination complaint under statute providing Office of Human Rights (OHR) with discretion to dismiss complaints based upon administrative convenience, may be unreviewable by Court of Appeals, even though it may erroneously deprive complainant of trial-type administrative hearing. D.C. Code 1981, §§ 1-1502(8), 1-2556(a). *Timus v. District of Columbia Dep't of Human Rights*, 633 A.2d 751, 1993 D.C. App. LEXIS 273 (1993).

Court of Appeals' jurisdiction to hear direct appeal from administrative orders and decisions is limited to petitions from decisions in proceedings in which legal rights, duties, or privileges are required, by any law or by constitutional right, to be determined after agency hearing. D.C. Code 1981, §§ 1-1502(8), 1-1510(a), 11-722. *Lawrence v. District of Columbia Bd. of Elections & Ethics*, 611 A.2d 529, 1992 D.C. App. LEXIS 197 (1992).

In order for court to have jurisdiction to review agency actions, case must be one that requires trial-type hearing before agency either by statute or by constitutional right. D.C. Code 1981, §§ 1-1502(8), 1-1510, 11-722. *Rones v. District of Columbia Dep't of Housing & Community Dev.*, 500 A.2d 998, 1985 D.C. App. LEXIS 574 (1985).

There are two limited but distinct bases for direct review jurisdiction of the District of Columbia Court of Appeals; first is the general grant of agency review jurisdiction contained in the Code and second is a congressional direction of review contained in an organic act. D.C. Code § 11-722. *Capitol Hill Restoration Soc. v.*

Moore, 410 A.2d 184, 1979 D.C. App. LEXIS 531 (1979).

District of Columbia Court of Appeals has jurisdiction to review administrative decisions or orders only if they emanate from agencies of the District of Columbia. D.C. Code §§ 1-1502(3-5), 1-1510, 11-722. *Latimer v. Joint Committee on Landmarks of Nat'l Capital*, 345 A.2d 484, 1975 D.C. App. LEXIS 248 (1975).

Joint Committee on Landmarks of the National Capital as an intergovernmental agency was not an agency of the District of Columbia, and the District of Columbia Court of Civil Appeals lacked jurisdiction to entertain petition for review of its action under the District of Columbia Administrative Procedure Act. D.C. Code §§ 1-1501 et seq., 1-1510, 11-722; National Historic Preservation Act of 1966, § 1 et seq., 16 U.S.C. § 470 et seq.; National Capital Planning Act of 1952, § 2, 40 U.S.C. § 71a; 40 U.S.C. § 104. *Latimer v. Joint Committee on Landmarks of Nat'l Capital*, 345 A.2d 484, 1975 D.C. App. LEXIS 248 (1975).

Medicine and related fields.

Issuance or denial of a license to practice naturopathy pursuant to Healing Arts Practice Act constituted a "contested case" for purpose of Administrative Procedure Act for which direct review could be had in District of Columbia Court of Appeals. D.C. Code 1981, §§ 1-1502(8), 1-1509(a), 1-1510, 2-1301 et seq. *District of Columbia v. Douglass*, 452 A.2d 329, 1982 D.C. App. LEXIS 464 (1982).

District of Columbia Court of Appeals had exclusive jurisdiction to review denial of application for license to practice naturopathy pursuant to Healing Arts Practice Act and, hence, superior court lacked jurisdiction to review Commission's action by way of suit for declaratory and injunctive relief. D.C. Code 1981, §§ 1-1510, 2-1301 et seq. *District of Columbia v. Douglass*, 452 A.2d 329, 1982 D.C. App. LEXIS 464 (1982).

Public service commissions.

Statute providing, inter alia, that District of Columbia Court of Appeals has jurisdiction to review orders and decisions of any agency of the District in accordance with Administrative Procedure Act, and may review orders or decision of the Public Service Commission in accordance with Commission's organic act, carves out only a limited area in which Administrative Procedure Act is inapplicable to the Commission, that being in the area of standard and scope of

review, rather than a wholesale exemption from Administrative Procedure Act coverage. D.C. Code §§ 1-1501 et seq., 11-722. *Chesapeake & Potomac Tel. Co. v. Public Service Com.*, 339 A.2d 710, 1975 D.C. App. LEXIS 397 (1975).

Conclusion that procedural requirements of Administrative Procedure Act were applicable to Public Service Commission was not weakened by statute which provides, inter alia, that District of Columbia Court of Appeals has jurisdiction to review orders and decisions of any agency of the District in accordance with Administrative Procedure Act, and may review orders or decisions of the Commission in accordance with Commission's organic act. D.C. Code §§ 1-1501 et seq., 11-722, 43-101 to 43-1007. *Chesapeake & Potomac Tel. Co. v. Public Service Com.*, 339 A.2d 710, 1975 D.C. App. LEXIS 397 (1975).

Zoning.

Decision by Foreign Missions Board of Zoning Adjustment (FM-BZA) was not rendered after contested case, and thus Court of Appeals lacked jurisdiction to review it. D.C. Code 1981, § 11-722. *United States v. District of Columbia Bd. of Zoning Adjustment*, 644 A.2d 995, 1994 D.C. App. LEXIS 50 (1994).

When Zoning Commission exercised its authority to determine needs of area by denying without public hearing a proposed amendment to zoning maps to change zoning classification of property the Commission was acting legislatively and was not subject to the "contested case" provisions of Administrative Procedure Act, with the result that such decision was not subject to direct review by the Court of Appeals, despite contention of property owner that mere submission of proposed amendment, and the subsequent rejection of same, constituted a "hearing" required by law, and thus was subject to review. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1510, 5-415, 11-722. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

Court of Appeals has jurisdiction to review decisions of the Zoning Commission in accordance with the Administrative Procedure Act, limited only to those decisions or orders entered in contested cases. D.C. Code §§ 1-1501 et seq., 1-1502(8), 1-1510, 11-722. *W. C. & A. N. Miller Dev. Co. v. District of Columbia Zoning Com.*, 340 A.2d 420, 1975 D.C. App. LEXIS 372 (1975).

§ 11-723. Certification of questions of law.

(a) The District of Columbia Court of Appeals may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, or the highest appellate court of any State, if there are

involved in any proceeding before any such certifying court questions of law of the District of Columbia which may be determinative of the cause pending in such certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the District of Columbia Court of Appeals.

(b) This section may be invoked by an order of any of the courts referred to in subsection (a) upon the court's motion or upon motion of any party to the cause.

(c) A certification order shall set forth (1) the question of law to be answered; and (2) a statement of all facts relevant to the questions certified and the nature of the controversy in which the questions arose.

(d) A certification order shall be prepared by the certifying court and forwarded to the District of Columbia Court of Appeals. The District of Columbia Court of Appeals may require the original or copies of all or such portion of the record before the certifying court as are considered necessary to a determination of the questions certified to it.

(e) Fees and costs shall be the same as in appeals docketed before the District of Columbia Court of Appeals and shall be equally divided between the parties unless precluded by statute or by order of the certifying court.

(f) The District of Columbia Court of Appeals may prescribe the rules of procedure concerning the answering and certification of questions of law, under this section.

(g) The written opinion of the District of Columbia Court of Appeals stating the law governing any questions certified under subsection (a) shall be sent by the clerk to the certifying court and to the parties.

(h)(1) The District of Columbia Court of Appeals, on its own motion or the motion of any party, may order certification of questions of law to the highest court of any State under the conditions described in subsection (a).

(2) The procedures for certification from the District of Columbia to a State shall be those provided in the laws of that State.

(Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 7.)

Prior Codifications. — 1981 Ed., § 11-723.

Editor's notes. — Uniform Law: This sec-

tion is based upon §§ 1 to 9 of the Uniform Certification of Questions of Law Act (1967).

CASE NOTES

ANALYSIS

Criminal cases.

In general.

Tort cases.

Criminal cases.

Certification of question as to whether defendant was entitled to credit against sentence imposed upon revocation of parole for time spent on parole was proper; relevant dicta in District of Columbia Court of Appeals opinions sent mixed signals, sister circuit of federal Court of Appeals had answered question differently than arguably controlling dicta of District

of Columbia Court of Appeals, District of Columbia Court of Appeals had probably not had opportunity to address issue with benefit of full briefing, and issue did not raise exclusively federal question as to interpretation of Home Rule Act. D.C. Code 1981, §§ 1-233(c)(2), 11-723, 24-431(a). *Noble v. United States Parole Comm'n*, 82 F.3d 1108, 1996 U.S. App. LEXIS 10163 (C.A.D.C. 1996).

In general.

Certification of question to District of Columbia Court of Appeals was warranted, as to whether petition sent to federal government agency located in District provided basis for

establishing personal jurisdiction over petitioner when plaintiff has alleged that petition fraudulently induced unwarranted government action against it, since scope of "government contacts" exception to District's personal jurisdiction statute was uncertain and resolution of question could affect numerous individuals and corporations that petitioned the federal government. *Companhia Brasileira Carbureto De Calicio v. Applied Indus. Materials Corp.*, 640 F.3d 369, 2011 U.S. App. LEXIS 7734 (C.A.D.C. 2011).

In suit that was brought by architect not licensed to practice architecture in District of Columbia to recover for services that she provided within the District on breach of contract or quantum meruit theory, Court of Appeals would certify to District of Columbia Court of Appeals, as question of extreme public importance, the question of whether, under District of Columbia law, an architect was barred from recovering on contract to perform architectural services in the District or in quantum meruit for architectural services rendered in the District because architect began negotiating for contract, entered into contract, or performed such services while licensed to practice architecture in another jurisdiction, but not in the District. *Sturdza v. Gov't of the United Arab Emirates*, 281 F.3d 1287, 2002 U.S. App. LEXIS 3650 (C.A.D.C.2002), remanded by 2002 U.S. App. LEXIS 11470 (D.C. Cir. June 6, 2002).

In deciding whether to certify question to the District of Columbia Court of Appeals, federal Court of Appeals asks whether District of Columbia law is genuinely uncertain with respect to the dispositive question, and whether the case is one of extreme public importance. *Nationwide Mut. Ins. Co. v. Richardson*, 270 F.3d 948, 2001 U.S. App. LEXIS 23724 (C.A.D.C. 2001).

In deciding whether to certify case to District of Columbia Court of Appeals, federal Court of Appeals looks to whether local law is genuinely uncertain with respect to dispositive question, and to whether case is one of extreme public importance; if, however, there is discernible path for Court to follow, then it does not stop short of deciding the question. *Dial A Car v. Transportation, Inc.*, 132 F.3d 743, 1998 U.S. App. LEXIS 546 (C.A.D.C. 1998).

Questions of whether, under District of Columbia law, plaintiff may recover against defendant who has negligently or recklessly destroyed or allowed to be destroyed evidence that would have assisted plaintiff in pursuing claim against third party, and if so, what standard of proximate cause must be met by plaintiff, were certified to District of Columbia Court of Appeals. D.C. Code 1981, § 11-723. *Holmes v. Amerex Rent-A-Car*, 113 F.3d 1285, 1997 U.S. App. LEXIS 12418 (C.A.D.C. 1997).

Question of whether under District of Columbia law, and on facts of case, plaintiff who has voluntarily assumed unreasonable risk of incurring particular injury may recover from defendant who failed to take last clear chance to prevent that injury was certified to District of Columbia Court of Appeals. D.C. Code 1981, § 11-723. *Johnson v. Washington Metro. Area Transit Auth.*, 98 F.3d 1423, 1996 U.S. App. LEXIS 28949 (C.A.D.C. 1996).

Federal court sitting in diversity should normally decline to speculate on how state's courts would decide novel question of local doctrine not previously presented to them. *Delahanty v. Hinckley*, 845 F.2d 1069, 1988 U.S. App. LEXIS 5678 (C.A.D.C. 1988).

Federal district court sitting in District of Columbia District of Columbia did not have authority to certify question to the District of Columbia Court of Appeals, and thus, had to resolve issue of District of Columbia law as it believed the District of Columbia Court of Appeals would. *Hoehn v. United States*, 217 F.Supp.2d 39, 2002 U.S. Dist. LEXIS 15800 (2002).

District court was without authority to certify question and request decision from District of Columbia Court of Appeals. D.C. Code 1981, § 11-723(a). *3307 M Street Partners v. Commonwealth Land Title Ins. Co.*, 782 F. Supp. 4, 1992 U.S. Dist. LEXIS 655 (1992).

The District of Columbia Court of Appeals is not bound by decisions of the Superior Court. *District of Columbia v. Gould*, 852 A.2d 50, 2004 D.C. App. LEXIS 315 (2004).

Pretrial certification for appellate review of trial court's denial of motion to dismiss on grounds of forum non conveniens is particularly appropriate, when a close question turns on the proper evaluation of the public interest factors. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

Court of Appeals may exercise its discretion to hear appeal of trial court's denial of motion to dismiss on grounds of forum non conveniens upon certification from Superior Court, pursuant to statutory procedures; certification procedure is intended to be exceptional and not merely a means of accelerated review for what may appear to be a difficult issue. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

Court of Appeals of District of Columbia is not limited to designated question of law in considering certified question but may exercise its prerogative to frame basic issues as it sees fit for informed decision. D.C. Code 1981, § 11-723. *Delahanty v. Hinckley*, 564 A.2d 758, 1989 D.C. App. LEXIS 199 (1989).

In answering certified question, District of Columbia Court of Appeals may exercise its prerogative to frame basic issues as it sees fit for an informed decision. D.C. Code 1981, § 11-

723. Penn Mut. Life Ins. Co. v. Abramson, 530 A.2d 1202, 1987 D.C. App. LEXIS 432 (1987).

In answering certified question, District of Columbia Court of Appeals need not confine its analysis to certifying court's statement of all facts relevant to question certified. D.C. Code 1981, §§ 11-723, 11-723(c). Penn Mut. Life Ins. Co. v. Abramson, 530 A.2d 1202, 1987 D.C. App. LEXIS 432 (1987).

As general rule, it is appropriate to review certified questions of District of Columbia law in same manner, and with same limitations, as questions presented on direct appeal. D.C. Code 1981, § 11-723. Penn Mut. Life Ins. Co. v. Abramson, 530 A.2d 1202, 1987 D.C. App. LEXIS 432 (1987).

Opinion by District of Columbia Court of Appeals on certified question is stare decisis of that court as well as res judicata as to subsequent litigation between same parties in local courts. D.C. Code 1981, § 11-723. Penn Mut. Life Ins. Co. v. Abramson, 530 A.2d 1202, 1987 D.C. App. LEXIS 432 (1987).

Tort cases.

On motion to enforce settlement agreement in Title VII action brought in District of Columbia federal court, certification was warranted on question of whether under District of Columbia law, a client is bound by a settlement agreement negotiated by her attorney when the client has not given the attorney actual authority to settle the case on those terms, but has authorized the attorney to attend a settlement conference before a magistrate judge and to negotiate on her behalf, and when the attorney leads the opposing party to believe that the client has agreed to those terms. *Makins v. District of Columbia*, 277 F.3d 544, 2002 U.S. App. LEXIS 780 (C.A.D.C. 2002).

In declaratory judgment action brought by insurer, Court of Appeals for the District of Columbia Circuit would certify to the District of Columbia Court of Appeals the question of whether, under District of Columbia law, a liability insurance policy's pollution exclusion clause applied to injuries arising from alleged carbon monoxide poisoning; District of Columbia law presented no discernable path for the federal Court of Appeals to follow in determining scope of clause, courts across the nation were hopelessly divided over whether clause was ambiguous as applied to carbon monoxide and other fumes, and issue was important to the public and likely to recur, given clause's appearance in standard commercial comprehensive general liability policies and its potential to affect the insurance coverage of most businesses in the District. *Nationwide Mut. Ins. Co. v. Richardson*, 270 F.3d 948, 2001 U.S. App. LEXIS 23724 (C.A.D.C. 2001).

In helicopter engine manufacturer's contribution claim against District of Columbia,

question whether public duty doctrine applied to police officers' interference with private efforts to rescue helicopter crash victims presented unresolved and critically important question of District of Columbia law and would, accordingly, be certified to District of Columbia Court of Appeals. *Joy v. Bell Helicopter Textron*, 999 F.2d 549, 1993 U.S. App. LEXIS 19063 (C.A.D.C. 1993).

Question of whether drug manufacturer could be held liable for injuries sustained by women who were exposed to DES prior to their birth would not be certified to both Maryland and District of Columbia courts, in view of clear existing state law, plaintiffs' failure to request certification before district court, and absence of concrete record upon which to decide issues. *Md.Code, Courts and Judicial Proceedings*, § 12-601; D.C. Code 1981, § 11-723. *Tidler v. Eli Lilly & Co.*, 851 F.2d 418, 1988 U.S. App. LEXIS 9315 (C.A.D.C. 1988).

Novel question of local doctrine not previously addressed by District of Columbia courts, as to whether manufacturers and marketers of Saturday Night Special handguns could be held strictly liable for injuries, would be certified to District of Columbia Court of Appeals, where neighboring state from which District of Columbia was created had recently answered question in affirmative. *Delahanty v. Hinckley*, 845 F.2d 1069, 1988 U.S. App. LEXIS 5678 (C.A.D.C. 1988).

Court of Appeals certified question to Maryland Court of Appeals as to whether site owner, which was a public transportation authority, was a "statutory employer" under the Maryland Workers' Compensation Act and hence immune from suit alleging negligence; Court noted there was no controlling Maryland appellate decision, constitutional provision, or statute, and that issue was one of general importance. *Rodriguez-Novo v. Recchi Am., Inc.*, 838 A.2d 1135, 2003 D.C. App. LEXIS 682 (2003).

Although statute allowing District of Columbia Court of Appeals to answer certified questions would have permitted it to hear question certified by United States Court of Appeals as to whether privity insulated architect from professional tort liability for economic losses to third parties with whom architect had no contractual relationship, court would exercise its discretion and decline to answer question when question was subject of interlocutory appeal in case pending before federal district court; extending certification to questions arising out of pending cases in district court would create potential for burdening the District of Columbia Court of Appeals in manner not contemplated by Congress and consideration of certified question before there was suitable development of record was likely to provide less valuable precedent. *Georgetown University v.*

Sportec Int'l, Inc., 572 A.2d 119, 1990 D.C. App. LEXIS 73 (1990).

Court of Appeals of District of Columbia would expand consideration of certified question as to whether manufacturers and distributors of Saturday Night Specials may be strictly liable for injuries arising from guns'

criminal use to consideration of whether any established theory of tort law in District of Columbia provided cause of action against manufacturers and distributors for injuries arising from guns' criminal uses. D.C. Code 1981, § 11-723. Delahanty v. Hinckley, 564 A.2d 758, 1989 D.C. App. LEXIS 199 (1989).

Subchapter III. Miscellaneous Provisions.

§ 11-741. Contempt powers.

(a) Subject to the limitation described in subsection (b), and in addition to the powers conferred by section 402 of title 18, United States Code, the District of Columbia Court of Appeals, or a judge thereof, may punish for disobedience of an order or for contempt committed in the presence of the court.

(b)(1) In the hearing of an appeal from an order of the Superior Court of the District of Columbia regarding the custody of a minor child conducted in the Family Division of the Superior Court under paragraph (1) or (4) of section 11-1101, no individual may be imprisoned for civil contempt for more than 12 months (except as provided in paragraph (2)), pursuant to the contempt power described in subsection (a), for disobedience of an order or for contempt committed in the presence of the court. This limitation does not apply to imprisonment for criminal contempt or for any other criminal violation.

(2) Notwithstanding the provisions of paragraph (1), an individual who is charged with criminal contempt pursuant to paragraph (3) may continue to be imprisoned for civil contempt until the completion of such individual's trial for criminal contempt, except that in no case may such an individual be imprisoned for more than 18 consecutive months for civil contempt pursuant to the contempt power described in subsection (a).

(3)(A) An individual imprisoned for 6 consecutive months for civil contempt for disobedience of an order in a proceeding described in paragraph (1) who continues to disobey such order may be prosecuted for criminal contempt for disobedience of such order at any time before the expiration of the 12-month period that begins on the first day of such individual's imprisonment, except that an individual so imprisoned as of the date of the enactment of this subsection may be prosecuted under this subsection at any time during the 90-day period that begins on the date of the enactment of this subsection.

(B) The trial of an individual prosecuted for criminal contempt pursuant to this paragraph —

- (i) shall begin not later than 90 days after the date on which such individual is charged with criminal contempt;
- (ii) shall, upon the request of the individual, be a trial by jury; and
- (iii) may not be conducted before the judge who imprisoned the individual for disobedience of an order pursuant to subsection (a).

(July 29, 1970, 84 Stat. 481, Pub. L. 91-358, title I, § 111; Sept. 23, 1989, 103 Stat. 634, Pub. L. 101-97, § 2(b).)

Prior Codifications. — 1981 Ed., § 11-741. 1973 Ed., § 11-741.

Editor's notes. — Application of §§ 2 and 3 of Pub. L. 101-97; Section 5 of Pub. L. 101-97 provided that the amendments made by §§ 2 and 3 shall apply with respect to any individual imprisoned before the expiration of the 18-month period that begins on the date of the

enactment of this Act for disobedience of an order or for contempt committed in the presence of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

CASE NOTES

ANALYSIS

Due process.
In general.

Due process.

Due process requires a hearing when contempt is alleged to have occurred outside presence of the court. U.S. Const. Amend. 14. In re Cummings, 471 A.2d 254, 1984 D.C. App. LEXIS 303 (1984).

In general.

Lack of injury to trade name owner since it allegedly was commercially inactive and was not using the name was no defense to civil contempt against competitor for violating consent decree that prohibited competitor from conducting business in the District of Columbia in the owner's corporate name; the settlement agreement entitled the owner to competitor's profits without proof of actual injury if the competitor conducted business in the District of Columbia using owner's name. Fed. Mktg. Co. v. Va. Impression Prods. Co., 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Elements of criminal contempt are (1) willful disobedience (2) of a court order (3) causing an obstruction of the orderly administration of justice. Fed. Mktg. Co. v. Va. Impression Prods. Co., 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Conviction for criminal contempt was supported by evidence that defendant, while under court order suspending her license to practice law in District of Columbia, entered into contracts with three witnesses to obtain immigration papers for their relatives, that language in contracts emphasized defendant's knowledge and mastery of the law, that she affirmatively represented herself to those witnesses as an attorney and used letterhead that suggested the name of a law firm, that she referred to witnesses as "clients," and that contracts charged \$10,000 to \$15,000 for services to be rendered. Fed. Mktg. Co. v. Va. Impression Prods. Co., 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Nonlawyer was estopped from relitigating merit of injunction against the unauthorized practice of law that formed basis of civil contempt order, including his broad claim that court and judge unlawfully restricted his representation of clients before administrative

agencies. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Neither federal Constitution nor any statute, entitled nonlawyer who alleged violated injunction against unauthorized practice of law to a jury trial in a civil contempt proceeding. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Even assuming injunction against nonlawyer's unauthorized practice of law was invalid, nonlawyer lawfully could be adjudged guilty of criminal contempt for failure to comply with injunction. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Although Committee on Unauthorized Practice of Law (CUPL) often initiated contempt proceedings, fact United States Attorney initiated request for a show cause order and prosecuted contempt charge against nonlawyer at behest of Court of Appeals had no effect upon jurisdiction of Court to hold nonlawyer in contempt for violating injunctions against unauthorized practice of law. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Government presented sufficient evidence to warrant a finding of criminal contempt against nonlawyer for violating injunctions against unauthorized practice of law, including evidence that nonlawyer had referred to himself as a former administrative law judge in publication and advertisement, and that nonlawyer induced client to believe she was being represented by attorney. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

A person who willfully disobeys a court order may be adjudicated in contempt. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Upon adjudging a person in civil contempt for disobeying an injunction against the unauthorized practice of law, the Court of Appeals could order the person to pay attorney fees of members of Committee on Unauthorized Practice of Law (CUPL); no conflict of interest or appearance thereof was sufficient in members' instituting and litigating civil contempt proceedings to prohibit award of attorney fees. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Evidence was sufficient to support attorney's conviction for criminal contempt, on charge that he practiced law during period of suspension, where attorney admitted having had actual notice of suspension, and thereafter appeared before judge, and made filings in connection with probate matter, which took him beyond 30-day grace period attorney thought he had to wind up his affairs before suspension order took effect. In re Richardson, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Person who willfully disobeys a court order may be adjudicated in contempt. In re Richardson, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Appellate court has the power to enforce its orders with contempt. In re Richardson, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Court of Appeals combined authority to punish for contempt and prescribe rules by which Court shall conduct its business enabled it to afford review by a division of the court of a contempt order based on practice of law by attorney who had been disbarred. D.C. Code 1981, §§ 11-741, 11-743. In re Burton, 614 A.2d 46, 1992 D.C. App. LEXIS 226 (1992).

Appointment by Court of Appeals of special master to determine facts in connection with applications for adjudication of contempt against temporarily suspended attorney arising out of his conduct in response to provisions of the suspension order was founded upon Court's inherent power to provide itself with appropriate instruments required to perform its duties. In re Cummings, 471 A.2d 254, 1984 D.C. App. LEXIS 303 (1984).

§ 11-742. Oaths, affirmations, and acknowledgments.

Each judge of the District of Columbia Court of Appeals and each employee of the court authorized by the chief judge may administer oaths and affirmations and take acknowledgments.

(July 29, 1970, 84 Stat. 481, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-742. 1973 Ed., § 11-742.

§ 11-743. Rules of court.

The District of Columbia Court of Appeals shall conduct its business according to the Federal Rules of Appellate Procedure unless the court prescribes or adopts modifications of those Rules.

(July 29, 1970, 84 Stat. 481, Pub. L. 91-358, title I, § 111.)

Cross references. — Rules concerning admission to bar, see § 11-2501.
Rules of court, see § 11-946.

Prior Codifications. — 1981 Ed., § 11-743.
1973 Ed., § 11-743.

CASE NOTES

In general.

When a local rule and a federal rule are identical, the Court of Appeals may look to federal court decisions in interpreting the federal rule as persuasive authority in interpreting the local rule. *Williams v. United States*, 878 A.2d 477, 2005 D.C. App. LEXIS 334 (2005), writ of certiorari denied by 551 U.S.

1138, 127 S. Ct. 2988, 168 L. Ed. 2d 715, 2007 U.S. LEXIS 7835, 75 U.S.L.W. 3678 (2007).

Single judge of appellate court was empowered to act in adjudicating and sentencing suspended attorney for violating court's interim suspension order, though attorney claimed that judge lacked jurisdiction because federal constitution required three-judge division of court

to hear criminal contempt proceeding, given authority conferred by contempt powers statute to single judge of appellate court to punish for disobedience of an order. *In re Richardson*, 759 A.2d 649, 2000 D.C. App. LEXIS 223 (2000).

Court of Appeals combined authority to punish for contempt and prescribe rules by which Court shall conduct its business enabled it to afford review by a division of the court of a contempt order based on practice of law by attorney who had been disbarred. D.C. Code 1981, §§ 11-741, 11-743. *In re Burton*, 614 A.2d 46, 1992 D.C. App. LEXIS 226 (1992).

While Court of Appeals is not bound by federal courts' interpretations of federal rules essentially identical or similar to District of Co-

lumbia rules, those interpretations may be accepted as persuasive authority in interpreting District of Columbia rules. *Tupling v. Britton*, 411 A.2d 349, 1980 D.C. App. LEXIS 222 (1980).

District of Columbia Court of Appeals in interpreting its own procedural rules is not bound by an interpretation given to similar federal procedural rules by the District of Columbia circuit court. Fed.Rules App.Proc. rule 4(b), 18 U.S.C.; D.C. Code Court of Appeals Rules, rule 4, pt. II(b); Fed.Rules Crim.Proc. rule 37(a)(2), 18 U.S.C. *West v. United States*, 346 A.2d 504, 1975 D.C. App. LEXIS 260 (1975).

§ 11-744. Judicial conference.

The chief judge of the District of Columbia Court of Appeals shall summon annually the active associate judges of the District of Columbia Court of Appeals and the active judges of the Superior Court of the District of Columbia to a conference at a time and place that the chief judge designates, for the purpose of advising as to means of improving the administration of justice within the District of Columbia. The chief judge shall preside at such conference which shall be known as the Judicial Conference of the District of Columbia. Every judge summoned shall attend, and, unless excused by the chief judge of the District of Columbia Courts [Court] of Appeals, shall remain throughout the conference. The District of Columbia Court of Appeals shall provide by its rules for representation of and active participation by members of the District of Columbia Bar and other persons active in the legal profession at such conference.

(Dec. 31, 1975, 89 Stat. 1102, Pub. L. 94-193, § 1(a); June 13, 1994, Pub. L. 103-266, § 1(b)(8), 108 Stat. 713.)

Cross references. — Court administration, chief judges, responsibilities, see § 11-1702.

Superior Court, family division, exclusive jurisdiction, see § 11-1101.

Prior Codifications. — 1981 Ed., § 11-744.

1973 Ed., § 11-744.

Editor's notes. — In the third sentence of this section, "Court" was inserted, in brackets, to correct an error in terminology.

CHAPTER 9. SUPERIOR COURT OF THE DISTRICT OF COLUMBIA.

Subchapter I. Continuation and Organization

Sec.

- 11-901. Continuation of courts; court of record; seal.
- 11-902. Organization of the court.
- 11-903. Composition.
- 11-904. Judges; service; compensation.
- 11-905. Oath of judges.
- 11-906. Administration by chief judge; discharge of duties.
- 11-907. Absence, disability, or disqualification of chief judge.
- 11-908. Designation and assignment of judges.
- 11-908A. Special rules regarding assignment and service of judges of Family Court.
- 11-909. Meetings and reports.
- 11-910. Clerks and secretaries for judges.
- 11-911. Emergency authority to conduct proceedings outside District of Columbia.

Subchapter II. Jurisdiction

Sec.

- 11-921. Civil jurisdiction.
- 11-922. Transfer of civil actions to Superior Court.
- 11-923. Criminal jurisdiction; commitment.
- 11-924. Jurisdiction with respect to violations of the Rules and Regulations of the Washington Metropolitan Area Transit Authority.
- 11-925. Rules regarding certain pending child custody cases.

Subchapter III. Miscellaneous Provisions

- 11-941. Issuance of warrants; record.
- 11-942. Subpenas [Subpoenas].
- 11-943. Process.
- 11-944. Contempt power.
- 11-945. Oaths, affirmations, and acknowledgments.
- 11-946. Rules of court.

*Subchapter I. Continuation and Organization.***§ 11-901. Continuation of courts; court of record; seal.**

The District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, and the District of Columbia Tax Court are consolidated in a single court to be known as the Superior Court of the District of Columbia (hereafter in this title referred to as the "Superior Court"). The Superior Court shall be a court of record in the District of Columbia and shall have a single seal.

(July 29, 1970, 84 Stat. 482, Pub. L. 91-358, title I, § 111.)

Cross references. — Continuation of District of Columbia court system, see § 1-207.18.

Section references. — This section is referred to in § 7-201.

Prior Codifications. — 1981 Ed., § 11-901.
1973 Ed., § 11-901.

CASE NOTES

In general.

Because the Superior Court is a court of record, what was stated for the record is the

operative equivalent of a written and signed agreement. *Elwell v. Elwell*, 947 A.2d 1136, 2008 D.C. App. LEXIS 231 (2008).

§ 11-902. Organization of the court.

(a) *In general.* — The Superior Court shall consist of the following:

- (1) The Civil Division.
- (2) The Criminal Division.
- (3) The Family Court.
- (4) The Probate Division.

(5) The Tax Division.

(b) *Branches.* — The divisions of the Superior Court may be divided into such branches as the Superior Court may by rule prescribe.

(c) *Designation of presiding judge of Family Court.* — The chief judge of the Superior Court shall designate one of the judges assigned to the Family Court of the Superior Court to serve as the presiding judge of the Family Court of the Superior Court.

(d) *Jurisdiction described.* — The Family Court shall have original jurisdiction over the actions, applications, determinations, adjudications, and proceedings described in § 11-1101. Actions, applications, determinations, adjudications, and proceedings being assigned to cross-jurisdictional units established by the Superior Court, including the Domestic Violence Unit, on the date of enactment of this section [January 8, 2002], may continue to be so assigned after the date of enactment of this section [Jan. 8, 2002].

(July 29, 1970, 84 Stat. 482, Pub. L. 91-358, title I, § 111; Jan. 8, 2002, 115 Stat. 2100, Pub. L. 107-114, § 2(a).)

Prior Codifications. — 1981 Ed., § 11-902. 1973 Ed., § 11-902.

Effect of amendments. — Pub. L. 107-114 rewrote the section which had read:

“The Superior Court shall consist of the fol-

lowing divisions: Civil Division, Criminal Division, Family Division, Probate Division, and Tax Division. The divisions of the Superior Court may be divided into such branches as the Superior Court may by rule prescribe.”

CASE NOTES

In general.

Though under Court Reform Act each individual division of superior court is entrusted with specific responsibility, must follow pertinent statutory mandates, and must transfer inappropriate cases to proper division, where claim is related to subject matter within responsibility of division, that division may rely upon its general equity powers to adjudicate claim and to award relief. D.C. Code 1981, § 11-101 et seq. *Poe v. Noble*, 525 A.2d 190, 1987 D.C. App. LEXIS 349 (1987).

There is no jurisdictional limitation prohibiting one division or branch of superior court from considering matters more appropriately

considered in another, and dismissal of action on grounds of jurisdictional limitation is proper only where none of the divisions possesses statutory basis for assertion of jurisdiction. D.C. Code 1981, §§ 11-902, 11-921; Civil Rule 56. *Ali Baba Co. v. Wilco, Inc.*, 482 A.2d 418, 1984 D.C. App. LEXIS 506 (1984).

Interests in orderly judicial procedure are best served if person's status as lawful widow, heir, or stranger to intestate be considered in first instance by division of superior court established for that purpose, the probate division. D.C. Code §§ 11-504, 11-902. *Andrade v. Jackson*, 401 A.2d 990, 1979 D.C. App. LEXIS 363 (1979).

§ 11-903. Composition.

The Superior Court of the District of Columbia shall consist of a chief judge and 61 associate judges.

(July 29, 1970, 84 Stat. 482, Pub. L. 91-358, title I, § 111; Mar. 19, 1984, 98 Stat. 65, Pub. L. 98-235, § 2; Nov. 21, 1989, 103 Stat. 1283, Pub. L. 101-168, § 138; Dec. 13, 1989, 103 Stat. 1967, Pub. L. 101-232, § 1; Apr. 18, 2008, 122 Stat. 696, Pub. L. 110-201, § 1.)

Prior Codifications. — 1981 Ed., § 11-903. 1973 Ed., § 11-903.

Effect of amendments. — Pub. Law 110-201 substituted “61” for “fifty-eight”.

§ 11-904. Judges; service; compensation.

(a) The chief judge and the judges of the Superior Court shall serve as provided in Chapter 15 of this title.

(b) Judges of the Superior Court shall be compensated at the rate prescribed by law for judges of United States district courts. The chief judge, while serving in that position, shall receive an additional \$500 per annum.

(July 29, 1970, 84 Stat. 482, Pub. L. 91-358, title I, § 111; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 16(b); June 13, 1994, Pub. L. 103-266, § 1(b)(9), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-904. 1973 Ed., § 11-904.

§ 11-905. Oath of judges.

Each judge of the Superior Court, when appointed shall take the oath prescribed for judges of courts of the United States.

(July 29, 1970, 84 Stat. 482, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-905. 1973 Ed., § 11-905.

§ 11-906. Administration by chief judge; discharge of duties.

(a) The chief judge shall administer and superintend the business of the Superior Court, as provided in Chapter 17 of this title. The chief judge shall attend to the discharge of the duties pertaining to the office of chief judge and perform such additional judicial work as the chief judge is able to perform.

(b) The chief judge shall, insofar as is consistent with this title, arrange and divide the business of the Superior Court and fix the time of sessions of the Family Court and the various divisions and branches of the Superior Court.

(July 29, 1970, 84 Stat. 483, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(10), (11), 108 Stat. 713; Jan. 8, 2002, 115 Stat. 2100, Pub. L. 107-114, § 2(b).)

Prior Codifications. — 1981 Ed., § 11-906. 1973 Ed., § 11-906. in subsec. (b), inserted “the Family Court and” before “the various divisions”.

Effect of amendments. — Pub. L. 107-114,

CASE NOTES

In general.

Chief Judge of the Superior Court had authority under the Court Reorganization Act to create a special unit of the court to exclusively hear domestic violence cases. *Robinson v. United States*, 769 A.2d 747, 2001 D.C. App. LEXIS 64 (2001).

Even assuming that the Chief Judge of the Superior Court did not have authority to create

a special unit to exclusively hear domestic violence cases, the trial court still had jurisdiction over defendant's prosecution for simple assault, as the alleged defect was not jurisdictional. *Robinson v. United States*, 769 A.2d 747, 2001 D.C. App. LEXIS 64 (2001).

Creation of Domestic Violence Unit of the Superior Court was not invalid due to fact that Chief Judge did not place the unit within any

particular division of the Superior Court. *Robinson v. United States*, 769 A.2d 747, 2001 D.C. App. LEXIS 64 (2001).

Domestic Violence Unit of the Superior Court did not lack jurisdiction to prosecute defendant for simple assault, even though defendant contended that assignment of certain divorce, custody, paternity, and child support cases to that unit was explicitly proscribed by the Court

Reorganization Act, in that such cases were within the exclusive jurisdiction of the Family Division; whether or not the Chief Judge lacked authority to assign such cases to the Domestic Violence Unit was irrelevant to defendant's case, as Chief Judge had authority to assign criminal misdemeanor cases to that unit. *Robinson v. United States*, 769 A.2d 747, 2001 D.C. App. LEXIS 64 (2001).

§ 11-907. Absence, disability, or disqualification of chief judge.

(a) When the chief judge of the court is absent or disabled, the chief judge's duties shall devolve upon and be performed by such associate judge as the chief judge may designate in writing. In the event that the chief judge is (1) disqualified or suspended, or (2) unable or fails to make such a designation, the chief judge's duties shall devolve upon and be performed by the associate judges of the court according to the seniority of their original commissions.

(b) A chief judge whose term as chief judge has expired shall continue to serve until redesignated or until a successor has been designated. When there is a vacancy in the position of chief judge, the position shall be filled temporarily as provided in subsection (a).

(July 29, 1970, 84 Stat. 483, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(12), (13), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-907. 1973 Ed., § 11-907.

§ 11-908. Designation and assignment of judges.

(a) Subject to subsection 11-908A, the chief judge may designate the number of judges to serve in any division and branch of the Superior Court and may assign and reassign any judge to sit in any division or branch. When making assignments to the Family Division and Tax Division, the chief judge shall consider the qualifications and interest of the judges. Each associate judge shall attend and serve in the division and branch to which assigned.

(b) When the business of the Superior Court requires, the chief judge may certify to the chief judge of the District of Columbia Court of Appeals the need for temporary assignment of an additional judge or judges as provided in section 11-707.

(c) Upon presentation of a certificate of necessity by the chief judge of the Superior Court, the chief judge of the United States Court of Appeals for the District of Columbia Circuit may designate and assign temporarily a judge or judges as provided in subsection (c) of section 292 of title 28, United States Code.

(July 29, 1970, 84 Stat. 483, Pub. L. 91-358, Title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(14), 108 Stat. 713; Jan. 8, 2002, 115 Stat. 2107, Pub. L. 107-114, § 3(e).)

Prior Codifications. — 1981 Ed., § 11-908. 1973 Ed., § 11-908.

Effect of amendments. — Pub. L. 107-114,

in subsec. (a), substituted “Subject to section 11-908A, the chief judge” for “The chief judge”.

§ 11-908A. Special rules regarding assignment and service of judges of Family Court.

(a) *Number of judges.* —

(1) *In general.* — The number of judges serving on the Family Court of the Superior Court shall be not more than 15.

(2) *Emergency reassignment.* — If the chief judge determines that, in order to carry out the intent and purposes of the District of Columbia Family Court Act of 2001, an emergency exists such that the number of judges needed on the Family Court of the Superior Court at any time is more than 15—

(A) the chief judge may temporarily reassign judges from other divisions of the Superior Court to serve on the Family Court who meet the requirements of paragraphs (1) and (3) of subsection (b) or senior judges who meet the requirements of those paragraphs, except such reassigned judges shall not be subject to the term of service requirements set forth in subsection (c); and

(B) the chief judge shall, within 30 days of emergency temporary reassignment pursuant to subparagraph (A), submit a report to the President and Congress describing—

(i) the nature of the emergency;

(ii) how the emergency was addressed, including which judges were reassigned; and

(iii) whether and why an increase in the number of Family Court judges authorized in subsection (a)(1) may be necessary to serve the needs of families and children in the District of Columbia.

(3) *Composition.* — The total number of judges on the Superior Court may exceed the limit on such judges specified in § 11-903 to the extent necessary to maintain the requirements of this subsection if—

(A) the number of judges serving on the Family Court is less than 15; and

(B) the Chief Judge of the Superior Court—

(i) is unable to secure a volunteer judge who is sitting on the Superior Court outside of the Family Court for reassignment to the Family Court;

(ii) obtains approval of the Joint Committee on Judicial Administration; and

(iii) reports to Congress regarding the circumstances that gave rise to the necessity to exceed the cap.

(b) *Qualifications.* — The chief judge may not assign an individual to serve on the Family Court of the Superior Court or handle a Family Court case unless—

(1) the individual has training or expertise in family law;

(2) the individual certifies to the chief judge that the individual intends to serve the full term of service, except that this paragraph shall not apply with respect to individuals serving as senior judges under § 11-1504, individuals

serving as temporary judges under § 11-908, and any other judge serving in another division of the Superior Court who is reassigned on an emergency temporary basis pursuant to subsection (a)(2);

(3) the individual certifies to the chief judge that the individual will participate in the ongoing training programs carried out for judges of the Family Court under § 11-1104(c); and

(4) the individual meets the requirements of section 433 of the District of Columbia Home Rule Act [D.C. Official Code § 1-204.33].

(c) *Term of service.* —

(1) *In general.* — Except as provided in paragraph (2), an individual assigned to serve as a judge of the Family Court of the Superior Court shall serve for a term of 5 years.

(2) *Special rule for judges serving on Superior Court the date of the enactment of the District of Columbia Family Court Act of 2001 [January 8, 2002].* —

(A) *In general.* — An individual assigned to serve as a judge of the Family Court of the Superior Court who is serving as a judge of the Superior Court on the date of the enactment of the District of Columbia Family Court Act of 2001 [January 8, 2002], shall serve for a term of not fewer than 3 years.

(B) *Reduction of period for judges serving in Family Division.* — In the case of a judge of the Superior Court who is serving as a judge in the Family Division of the Court on the date of the enactment of the District of Columbia Family Court Act of 2001 [January 8, 2002], the 3-year term applicable under subparagraph (A) of this paragraph shall be reduced by the length of any period of consecutive service as a judge in such Division immediately preceding the date of the enactment of such Act [January 8, 2002].

(3) *Assignment for additional service.* — After the term of service of a judge of the Family Court (as described in paragraph (1)) expires, at the judge's request and with the approval of the chief judge, the judge may be assigned for additional service on the Family Court for a period of such duration (consistent with section 431(c) of the District of Columbia Home Rule Act [D.C. Official Code, § 1-204.31(c)]) as the chief judge may provide.

(4) *Permitting service on Family Court for entire term.* — At the request of the judge and with the approval of the chief judge, a judge may serve as a judge of the Family Court for the judge's entire term of service as a judge of the Superior Court under section 431(c) of the District of Columbia Home Rule Act [D.C. Official Code, § 1-204.31(c)].

(d) *Reassignment to other divisions.* — The chief judge may reassign a judge of the Family Court to any division of the Superior Court if the chief judge determines that in the interest of justice the judge is unable to continue serving in the Family Court.

(Jan. 8, 2002, 115 Stat. 2101, Pub. L. 107-114, § 3(a); Aug. 2, 2002, 116 Stat. 847, Pub. L. 107-206, § 406.)

Effect of amendments. — Pub. L. 107-206, in subsec. (b)(4), substituted "section 433 of the District of Columbia Home Rule Act" for "section 11-1501(b)".

References in text. — The District of Columbia Family Court Act of 2001, referred to in subsecs. (a)(2), (c)(2), (c)(2)(A), and (c)(2)(B), is Pub. L. 107-114, 115 Stat. 2100, Jan. 8, 2002.

Editor's notes. — Section 2(b) to (d) of Pub. L. 107-114 provided:

“(b) **PLAN FOR FAMILY COURT TRANSITION.**—

“(1) **IN GENERAL.**— Not later than 90 days after the date of the enactment of this Act Jan. 8, 2002, the chief judge of the Superior Court of the District of Columbia shall prepare and submit to the President and Congress a transition plan for the Family Court of the Superior Court, and shall include in the plan the following:

“(A) The chief judge’s determination of the role and function of the presiding judge of the Family Court.

“(B) The chief judge’s determination of the number of judges needed to serve on the Family Court.

“(C) The chief judge’s determination of the number of magistrate judges of the Family Court needed for appointment under section 11-1732, District of Columbia Code.

“(D) The chief judge’s determination of the appropriate functions of such magistrate judges, together with the compensation of and other personnel matters pertaining to such magistrate judges.

“(E) A plan for case flow, case management, and staffing needs (including the needs for both judicial and nonjudicial personnel) for the Family Court, including a description of how the Superior Court will handle the one family, one judge requirement pursuant to section 11-1104(a) for all cases and proceedings assigned to the Family Court.

“(F) A plan for space, equipment, and other physical plant needs and requirements during the transition, as determined in consultation with the Administrator of General Services.

“(G) An analysis of the number of magistrate judges needed under the expedited appointment procedures established under section 6(d) in reducing the number of pending actions and proceedings within the jurisdiction of the Family Court (as described in section 11-902(d), District of Columbia, as amended by subsection (a)).

“(H) Consistent with the requirements of paragraph (2), a proposal for the disposition or transfer to the Family Court of child abuse and neglect actions pending as of the date of enactment of this Act (which were initiated in the Family Division but remain pending before judges serving in other Divisions of the Superior Court as of such date) in a manner consistent with applicable Federal and District of Columbia law and best practices, including best practices developed by the American Bar Association and the National Council of Juvenile and Family Court Judges.

“(I) An estimate of the number of cases for which the deadline for disposition or transfer to the Family Court, specified in paragraph (2)(B),

cannot be met and the reasons why such deadline cannot be met.

“(2) **IMPLEMENTATION OF THE PLAN FOR TRANSFER OR DISPOSITION OF ACTIONS AND PROCEEDINGS TO FAMILY COURT.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (C), the chief judge of the Superior Court and the presiding judge of the Family Court shall take such steps as may be required as provided in the proposal for disposition of actions and proceedings under paragraph (1)(H) to ensure that each child abuse and neglect action of the Superior Court (as described in section 11-902(d), District of Columbia Code, as amended by subsection (a)) is transferred to the Family Court or otherwise disposed of as provided in subparagraph (B).

“(B) **DEADLINE.**—

“(i) **IN GENERAL.**—Notwithstanding any other provision of this Act or any amendment made by this Act and except as provided in subparagraph (C), no child abuse or neglect action shall remain pending with a judge not serving on the Family Court upon the expiration of 18 months after the filing of the transition plan required under paragraph (1).

“(ii) **RULE OF CONSTRUCTION.**—The chief judge of the Superior Court should make every effort to provide for the earliest practicable disposition of actions. Nothing in this subparagraph shall preclude the immediate transfer of cases to the Family Court, particularly cases which have been filed with the court for less than 6 months prior to the date of enactment of this Act [Jan. 8, 2002].

“(C) **RETAINED CASES.**— Child abuse and neglect cases that were initiated in the Family Division but remain pending before judges, including senior judges as defined in section 11-1504, District of Columbia Code, in other Divisions of the Superior Court as of the date of enactment of this Act may remain before judges, including senior judges, in such other Divisions when—

“(i) the case remains at all times in full compliance with Public Law 105-89, if applicable; and

“(ii) the chief judge determines, in consultation with the presiding judge of the Family Court, based on the record in the case and any unique expertise, training, or knowledge of the case that the judge might have, that permitting the judge to retain the case would lead to permanent placement of the child more quickly than reassignment to a judge in the Family Court.

“(D) **PRIORITY FOR CERTAIN ACTIONS AND PROCEEDINGS.**—The chief judge of the Superior Court, in consultation with the presiding judge of the Family Court, shall give priority consideration to the disposition or transfer of the following actions and proceedings:

“(i) The action or proceeding involves an allegation of abuse or neglect.

“(ii) The action or proceeding was initiated in the family division prior to the 2-year period which ends on the date of enactment of this Act [Jan. 8, 2002].

“(iii) The judge to whom the action or proceeding is assigned as of the date of enactment of this Act [Jan. 8, 2002] is not assigned to the Family Division.

“(E) PROGRESS REPORTS.—The chief judge of the Superior Court shall submit reports to the President, to the Committee on Appropriations of each House, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives at 6-month intervals for a period of 2 years after the date of submission of the transition plan required under paragraph (1) on the progress made towards disposing of actions or proceedings described in subparagraph (B).

“(F) RULE OF CONSTRUCTION.—Nothing in this subsection shall preclude the chief judge, in consultation with the presiding judge of the Family Court, from transferring actions or proceedings pending before judges outside the Family Court at the enactment of this Act which do not involve allegations of abuse and neglect but which would otherwise fall under the jurisdiction of the Family Court to judges in the Family Court prior to the deadline as defined in subparagraph 2(B), particularly if such transfer would result in more efficient resolution of such actions or proceedings.

“(3) EFFECTIVE DATE OF IMPLEMENTATION OF PLAN.—The chief judge of the Superior Court may not take any action to implement the transition plan under this subsection until the expiration of the 30-day period which begins on the date the chief judge submits the plan to the President and Congress under paragraph (1).

“(c) TRANSITION TO REQUIRED NUMBER OF JUDGES.—

“(1) ANALYSIS BY CHIEF JUDGE OF SUPERIOR COURT.—The chief judge of the Superior Court of the District of Columbia shall include in the transition plan prepared under subsection (b)—

“(A) the chief judge’s determination of the number of individuals serving as judges of the Superior Court who—

“(i) meet the qualifications for judges of the Family Court of the Superior Court under section 11-908A, District of Columbia Code (as added by subsection (a)); and

“(ii) are willing and able to serve on the Family Court; and

“(B) if the chief judge determines that the number of individuals described in subparagraph (A) is less than 15, a request that the Judicial Nomination Commission recruit and

the President nominate (in accordance with section 433 of the District of Columbia Home Rule Act) such additional number of individuals to serve on the Superior Court who meet the qualifications for judges of the Family Court under section 11-908A, District of Columbia Code, as may be required to enable the chief judge to make the required number of assignments.

“(2) ROLE OF DISTRICT OF COLUMBIA JUDICIAL NOMINATION COMMISSION.—

For purposes of section 434(d)(1) of the District of Columbia Home Rule Act, the submission of a request from the chief judge of the Superior Court of the District of Columbia under paragraph (1)(B) shall be deemed to create a number of vacancies in the position of judge of the Superior Court equal to the number of additional appointments so requested by the chief judge, except that the deadline for the submission by the District of Columbia Judicial Nomination Commission of nominees to fill such vacancies shall be 90 days after the creation of such vacancies. In carrying out this paragraph, the District of Columbia Judicial Nomination Commission shall recruit individuals for possible nomination and appointment to the Superior Court who meet the qualifications for judges of the Family Court of the Superior Court.

“(d) REPORT BY COMPTROLLER GENERAL.—

“(1) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General shall prepare and submit to Congress and the chief judge of the Superior Court of the District of Columbia a report on the implementation of this Act (including the implementation of the transition plan under subsection (b)), and shall include in the report the following:

“(A) An analysis of the procedures used to make the initial appointments of judges of the Family Court under this Act and the amendments made by this Act, including an analysis of the time required to make such appointments and the effect of the qualification requirements for judges of the Court (including requirements relating to the length of service on the Court) on the time required to make such appointments.

“(B) An analysis of the impact of magistrate judges for the Family Court (including the expedited initial appointment of magistrate judges for the Court under section 6(d)) on the workload of judges and other personnel of the Court.

“(C) An analysis of the number of judges needed for the Family Court, including an analysis of how the number may be affected by the qualification requirements for judges, the availability of magistrate judges, and other provi-

sions of this Act or the amendments made by this Act.

“(D) An analysis of the timeliness of the resolution and disposition of pending actions and proceedings required under the transition plan (as described in paragraphs (1)(I) and (2) of subsection (b)), including an analysis of the effect of the availability of magistrate judges on the time required to resolve and dispose of such actions and proceedings.

“(2) SUBMISSION TO CHIEF JUDGE OF SUPERIOR COURT.—Prior to submitting the report under paragraph (1) to Congress, the Comptroller General shall provide a preliminary version of the report to the chief judge of the Superior Court and shall take any comments and recommendations of the chief judge into consideration in preparing the final version of the report.”

§ 11-909. Meetings and reports.

(a) The judges of the Superior Court shall meet upon the call of the chief judge, but not less than once each month, to consider matters relating to the business and operations of the court. The court may by rule require additional meetings.

(b) Each associate judge shall submit to the chief judge such reports and data as the chief judge may request. Each judge shall submit a monthly written report to the chief judge and the Commission on Judicial Disabilities and Tenure which shall be in a form prescribed by the chief judge after consultation with the Commission and which shall set forth the duties performed by the reporting judge as follows:

(1) The number of days' attendance in court of the judge during the month covered.

(2) The division and branch (if any) of the court which the judge attended.

(3) The number of hours per day of the judge's attendance.

(4) The number and type of matters disposed of by the judge during the months covered.

(5) Such other data as the chief judge may require.

(July 29, 1970, 84 Stat. 483, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(15), (16), 108 Stat. 713.)

Section references. — This section is referred to in § 11-1730.

Prior Codifications. — 1981 Ed., § 11-909. 1973 Ed., § 11-909.

§ 11-910. Clerks and secretaries for judges.

Each judge of the Superior Court may appoint and remove a personal law clerk and a personal secretary.

(July 29, 1970, 84 Stat. 484, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-910. 1973 Ed., § 11-910.

§ 11-911. Emergency authority to conduct proceedings outside District of Columbia.

(a) *In general.* — The Superior Court may hold special sessions at any place within the United States outside the District of Columbia as the nature of the business may require and upon such notice as the Superior Court orders, upon a finding by either the chief judge of the Superior Court (or, if the chief judge

is absent or disabled, the judge designated under section 11-907(a)) or the Joint Committee on Judicial Administration in the District of Columbia that, because of emergency conditions, no location within the District of Columbia is reasonably available where such special sessions could be held.

(b) *Business transacted.* — The Superior Court may transact any business at a special session outside the District of Columbia authorized pursuant to this section which it has the authority to transact at a regular session, except that a criminal trial may not be conducted at such a special session without the consent of the defendant.

(c) *Summoning of jurors.* — Notwithstanding any other provision of law, in any case in which special sessions are conducted pursuant to this section, the Superior Court may summon jurors—

(1) in civil proceedings, from any part of the District of Columbia or, if jurors are not readily available from the District of Columbia, the jurisdiction in which it is holding the special session; and

(2) in criminal trials, from any part of the District of Columbia or, if jurors are not readily available from the District of Columbia and if the defendant so consents, the jurisdiction in which it is holding the special session.

(d) *Notice requirements.* — If the Superior Court issues an order exercising its authority under subsection (a), the Court—

(1) through the Joint Committee on Judicial Administration in the District of Columbia, shall send notice of such order, including the reasons for the issuance of such order, to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives; and

(2) shall provide reasonable notice to the United States Marshals Service before the commencement of any special session held pursuant to such order.

(Oct. 16, 2006, 120 Stat. 2025, Pub. L. 109-356, § 114(b)(1).)

Subchapter II. Jurisdiction.

§ 11-921. Civil jurisdiction.

(a) Except as provided in subsection (b), the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia. Such jurisdiction shall vest in the court as follows:

(1) Beginning on the effective date of the District of Columbia Court Reorganization Act of 1970, the court has jurisdiction of any civil action or other matter begun before such effective date in the District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, or the District of Columbia Tax Court.

(2) Beginning on such effective date, the court has jurisdiction of any civil action or other matter, at law or in equity, which is begun in the Superior Court on or after such effective date and in which the amount in controversy does not exceed \$50,000.

(3) Beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) of any civil action or other matter, at law or in equity, which —

(A) is brought under —

- (i) subchapter I of Chapter 11 of Title 16 (relating to ejectment);
- (ii) subchapter II or III of Chapter 13 of Title 16 (relating to the condemnation of land on behalf of the District of Columbia);
- (iii) Chapter 19 of Title 16 (relating to writs of habeas corpus directed to persons other than Federal officers and employees);
- (iv) Chapter 25 of Title 16 (relating to change of name);
- (v) Chapter 33 of Title 16 (relating to quieting title to real property);
- (vi) subchapter II of Chapter 35 of Title 16 (relating to writ of quo warranto);
- (vii) Chapter 37 of Title 16 (relating to replevin of personal property);
- (viii) the Hospital Treatment for Drug Addicts Act for the District of Columbia (D.C. Official Code, secs. 24-701 through 24-711) (relating to commitment of narcotics users); or
- (ix) section 2 of the Act of August 3, 1968 (D.C. Official Code, sec. 2-201.02) (relating to contractors bonds).

(B) involves an appeal from or petition for review of any assessment of tax (or civil penalty thereon) made by the District of Columbia; or

(C) is brought under Chapter 23 of Title 16.

(4) Immediately following the expiration of the eighteen-month period beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) of any civil action or other matter, at law or in equity, brought under —

- (A) Chapter 3 of Title 21 (relating to gifts to minors);
- (B) Chapter 5 of Title 21 (relating to hospitalization of the mentally ill);
- (C) Chapter 7 [repealed] of Title 21 (relating to property of the mentally ill);

(D) Chapter 11 of Title 21 (relating to commitment and maintenance of substantially retarded persons);

(E) Chapter 13 [repealed] of Title 21 (relating to appointment of committees for alcoholics and addicts);

(F) Chapter 15 [repealed] of Title 21 (relating to appointment of conservators); or

(G) Chapter 3, 7 [repealed], 11, 13 [repealed], or 15 [repealed] of Title 21 in the United States District Court for the District of Columbia and not completed in that court before the expiration of such eighteen-month period.

(5) Immediately following the expiration of the thirty-month period beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) —

(A) of any matter (at law or in equity) —

(i) brought under Chapter 29 of Title 16 (relating to partition of property and assignment of dower);

(ii) which would have been within the jurisdiction of the Orphans Court of Washington County, District of Columbia before June 21, 1870;

(iii) relating to the execution or validity of wills devising real property within the District of Columbia, and of wills and testaments properly presented for probate in the court, and the admission to probate and recording of those wills;

(iv) relating to the proof of wills of either personal or real property and the revocation of probate of wills for cause;

(v) involving the granting and revocation for cause of letters testamentary, letters of administration, letters ad colligendum and letters of guardianship, and the appointment of successors to persons whose letters have been revoked;

(vi) involving the hearing, examination, and issuance of decrees upon accounts, claims, and demands existing between executors or administrators and legatees or persons entitled to a distributive share of an intestate estate, or between wards and their guardians;

(vii) involving the enforcement of the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to the court;

(viii) involving the enforcement of distribution of estates by executors and administrators and the payment or delivery by guardians of money or property belonging to their wards; or

(ix) otherwise within the probate jurisdiction of the United States District Court for the District of Columbia on the day before such effective date; and

(B) any matter (at law or in equity) described in subparagraph (A) which was begun in the United States District Court for the District of Columbia and not completed in that court before the expiration of such thirty-month period.

(6) Immediately following the expiration of the thirty-month period beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) of any civil action or other matter, at law or in equity, brought in the District of Columbia.

(b) The Superior Court does not have jurisdiction over any civil action or other matter (1) over which exclusive jurisdiction is vested in a Federal court in the District of Columbia, or (2) over which jurisdiction is vested in the United States District Court for the District of Columbia under section 11-501 (relating to civil actions or other matters begun in such court before the expiration of the thirty-month period beginning on the effective date of the District of Columbia Court Reorganization Act of 1970).

(July 29, 1970, 84 Stat. 484, Pub. L. 91-358, title I, § 111; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 2(a)(1).)

Cross references. — Claims against the District, definition of court, see § 2-411.

District Charter provisions relating to jurisdiction of Superior Court, see § 1-204.31.

Section references. — This section is referred to in §§ 2-411, 11-501, and 16-601.

Prior Codifications. — 1981 Ed., § 11-921. 1973 Ed., § 11-921.

References in text. — “The effective date of the District of Columbia Court Reorganization Act of 1970,” referred to throughout this section, means, as set forth in § 199(c) of the Act,

the first day of the seventh calendar month which began after the enactment of the Act.

“Chapter 7 of title 21”, referred to in subsection (a)(4)(C), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

“Chapter 13 of title 21”, referred to in subsection (a)(4)(E), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

“Chapter 15 of title 21”, referred to in subsection (a)(4)(F), was repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

“Chapters 7, 13, 15 of title 21”, referred to in

subsection (a)(4)(G), were repealed by § 3 of D.C. Law 6-204, effective February 28, 1987.

CASE NOTES

ANALYSIS

Administrative review.

Condemnation.

Court of general jurisdiction.

Divisions of court.

—Family division, divisions of court.

—In general.

—Landlord and tenant branch, divisions of court.

—Probate division, divisions of court.

Garnishment.

In general.

Jurisdiction, generally.

Matters involving trustees.

Parallel to state court.

Tax proceedings.

Trade actions.

Transition.

Administrative review.

Superior Court, acting in appellate capacity in reviewing decision of Office of Employment Appeals, had jurisdiction to decide whether to recall its mandate and whether to order that administrative record be reopened. *District of Columbia v. Stokes*, 785 A.2d 666, 2001 D.C. App. LEXIS 242 (2001).

Superior court's power under All Writs Act to grant emergency relief pending decision by Contract Appeals Board (CAB) does not give it authority to function as competitor of CAB or to ignore CAB's findings; superior court is not authorized as alternative hearing tribunal for bid protest. D.C. Code 1981, § 1-1189.3; 18 U.S.C. § 1651. *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Superior court owes Contract Appeals Board (CAB) deference as primary fact finder in bid protest proceedings. D.C. Code 1981, § 1-1189.8(d). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Circumstances in which superior court is entitled to exercise its jurisdiction to issue temporary relief pending completion of agency proceedings are extremely rare. *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

There is no necessary inconsistency between Procurement Practices Act provision granting Contract Appeals Board (CAB) exclusive jurisdiction to review protest of solicitation or award of contract and superior court's authority under All Writs Act to issue emergency relief pending outcome of CAB proceedings. 18 U.S.C. §§ 1651, 1651(a); D.C. Code 1981, §§ 1-1189.3,

1-1502(8). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Superior court had jurisdiction to review Contract Appeals Board's (CAB) decisions in bid protest, and thus, superior court also possessed power under All Writs Act to issue temporary relief to disappointed bidder, even though CAB had not yet issued decision. D.C. Code 1981, §§ 1-233(a)(4), 1-1181.1 to 1-1192.6, 1-1189.3, 1-1502(8), 1-1510(a), 11-921; 18 U.S.C. §§ 1651, 1651(a). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Fact that Procurement Practices Act appeared to prohibit Contract Appeals Board (CAB) from enjoining contract award had no bearing on disappointed bidder's standing to seek relief in superior court to enjoin award; disappointed bidder which could demonstrate standing could sue for emergency relief in superior court regardless of CAB's apparent incapacity to issue such relief. D.C. Code 1981, §§ 1-1189.8, 1-1189.8(e)(1). *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 1993 D.C. App. LEXIS 261 (1993).

Superior court rather than District of Columbia Court of Appeals had jurisdiction to review Housing Rent Commission's decision affirming order allowing landlord to increase rents charged at apartment building so as to insure return on investment. D.C. Code §§ 1-147(4), 1-1510, 11-921, 45-1625. *Columbia Realty Venture v. District of Columbia Housing Rent Com.*, 350 A.2d 120, 1975 D.C. App. LEXIS 287 (1975).

Condemnation.

Property owner's allegation that city council authorized an illegal exercise of eminent domain under false pretext did not deprive trial court of subject-matter jurisdiction over condemnation proceeding. *Franco v. District of Columbia*, 39 A.3d 890, 2012 D.C. App. LEXIS 125 (2012).

Court of general jurisdiction.

Threatened strike by employees of school district was not an unfair labor practice such that Public Employee Relations Board was vested with primary jurisdiction over attempt by superintendent of school district and District of Columbia to prohibit the strike, and Superior Court had jurisdiction to issue a preliminary injunction; Superior Court was a court of general jurisdiction with the power to adjudicate any civil action at law or in equity involving local law, and by enacting prohibition

against strikes in Comprehensive Merit Personnel Act (CMPA) that was in addition to provision that banned strikes as unfair labor practices Council of the District of Columbia manifested its intent to enable District government to go directly to Superior Court to enjoin strikes by public employees. *Feaster v. Vance*, 832 A.2d 1277, 2003 D.C. App. LEXIS 566 (2003).

As a court of general jurisdiction, the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia unless jurisdiction is vested exclusively in a federal court. *Slater v. Biehl*, 793 A.2d 1268, 2002 D.C. App. LEXIS 65 (2002).

Superior Court is a court of general jurisdiction with the power to adjudicate any civil action at law or in equity involving local law. *Martin v. District of Columbia Courts*, 753 A.2d 987, 2000 D.C. App. LEXIS 107 (2000).

Superior Court of District of Columbia is court of general jurisdiction, and has power to adjudicate actions at law or in equity within its jurisdiction. *Estate of Ellis by Clark v. Hoes*, 677 A.2d 50, 1996 D.C. App. LEXIS 91 (1996).

Unless legislature has divested superior court of jurisdiction over particular subject matter though enactment of legislation, court has general jurisdiction over common-law claims for relief. Civil Rules 8(a)(1), 12(b)(1), (h)(3); D.C. Code 1981, § 11-921. *King v. Kidd*, 640 A.2d 656, 1993 D.C. App. LEXIS 213 (1993).

Superior court, as constituted under District of Columbia Court Reform and Criminal Procedure Act, is not court of limited jurisdiction but court of general jurisdiction with power to adjudicate any civil action at law or in equity involving local laws; although the superior court is separated into number of divisions, such functional divisions do not delimit their power as tribunals of the superior court with general jurisdiction to adjudicate civil claims and disputes. D.C. Code §§ 11-101 et seq., 11-910, 11-921. *Andrade v. Jackson*, 401 A.2d 990, 1979 D.C. App. LEXIS 363 (1979).

Divisions of court.

— Family division, divisions of court.

If divorced wife was entitled to relief in her suit for specific performance or damages for former husband's alleged failure to abide by terms of separation agreement providing for maintenance and support of wife, it would be within power of Domestic Relations Branch of District of Columbia Court of General Sessions to grant it, whether it was equitable or legal in nature. D.C. Code §§ 11-1141(a)(4), 11-1161. *Den v. Den*, 375 F.2d 328, 1967 U.S. App. LEXIS 7287 (C.A.D.C. 1967).

Even had Family Division lacked jurisdiction to order specific performance of marital property settlement agreement because it was not merged with divorce decree, it would have been improper to dismiss ex-wife's complaint; rather, case should have been transferred to Civil Division. *Clay v. Faison*, 583 A.2d 1388, 1990 D.C. App. LEXIS 322 (1990).

Where, by terms of divorce order, family division had ceased to have jurisdiction over property aspects of case, it was error for former wife to style pleading for appointment of trustee to sell marital residence as a motion and to file it under the same docket number as the divorce action, but the error did not deprive the family division of jurisdiction over the partition proceeding. D.C. Code 1981, § 11-921(a). *Farmer v. Farmer*, 526 A.2d 1365, 1987 D.C. App. LEXIS 366 (1987).

Property dispute between former husband and wife arose out of divorce action so that family division had jurisdiction over the dispute even though the divorce action had terminated by terms of the order entered therein. D.C. Code 1981, § 11-921(a). *Farmer v. Farmer*, 526 A.2d 1365, 1987 D.C. App. LEXIS 366 (1987).

Former wife's motion to appoint trustees to sell marital residence was tantamount to commencement of new action in the family division for partition and provided former husband with adequate notice, even though it was improperly styled as a motion in the previously terminated divorce action. *Farmer v. Farmer*, 526 A.2d 1365, 1987 D.C. App. LEXIS 366 (1987).

Domestic relations branch of trial court does not have authority to determine custody of illegitimate children whose custody is not contested. *Martin v. Martin*, 240 A.2d 363, 1968 D.C. App. LEXIS 141 (App. 1968).

Trial court had subject matter to issue permanent child support order, even though parties no longer resided in District of Columbia, where mother and child resided in District at time mother filed action and issues to be determined at time of filing had not yet been resolved. *Brown v. Hines-Williams*, 2 A.3d 1077, 2010 D.C. App. LEXIS 499 (2010).

— In general.

Prejudicial dismissal on the ground that the Civil Division, not the Probate Division, was the proper forum was erroneous; the dismissal would have been proper only if no division of the Superior Court possessed jurisdiction. *Brandenburger & Davis, Inc. v. Estate of Lewis*, 771 A.2d 984, 2001 D.C. App. LEXIS 85 (2001).

No jurisdictional bar exists to one division of the Superior Court entertaining an action more appropriately considered in another division, so long as doing so does not violate the statute or rules of the court and the claim has a rational nexus to a subject matter within the responsi-

bility of that division. *Brandenburger & Davis, Inc. v. Estate of Lewis*, 771 A.2d 984, 2001 D.C. App. LEXIS 85 (2001).

Although trial court rules did not permit Landlord and Tenant Branch of trial court to hear purchaser's claim based on breach of contract and equitable, possessory interest in land, trial court which acted as both Landlord and Tenant Branch court and Civil Actions Branch court had jurisdiction over purchaser's claims as Landlord and Tenant Branch and Civil Actions Branch are part of Civil Division and purchaser received same process to which he would have been entitled had his case been transferred to Civil Actions Branch. *Williams v. Dudley Trust Found.*, 675 A.2d 45, 1996 D.C. App. LEXIS 70 (1996).

Though under Court Reform Act each individual division of superior court is entrusted with specific responsibility, must follow pertinent statutory mandates, and must transfer inappropriate cases to proper division, where claim is related to subject matter within responsibility of division, that division may rely upon its general equity powers to adjudicate claim and to award relief. D.C. Code 1981, § 11-101 et seq. *Poe v. Noble*, 525 A.2d 190, 1987 D.C. App. LEXIS 349 (1987).

There is no jurisdictional limitation prohibiting one division or branch of superior court from considering matters more appropriately considered in another, and dismissal of action on grounds of jurisdictional limitation is proper only where none of the divisions possesses statutory basis for assertion of jurisdiction. D.C. Code 1981, §§ 11-902, 11-921; Civil Rule 56. *Ali Baba Co. v. Wilco, Inc.*, 482 A.2d 418, 1984 D.C. App. LEXIS 506 (1984).

— Landlord and tenant branch, divisions of court.

Reach of Landlord and Tenant Branch is narrowly limited to summary actions for possession of real property, claims for personal property in the premises, and claims for money judgments based on rent in arrears, while defendant, in addition to general denial, is limited to equitable defense and recoupment or setoff, certain counterclaims for money judgment, and plea of title. Landlord and Tenant Rules 1, 3, 5. *Barnes v. Scheve*, 633 A.2d 62, 1993 D.C. App. LEXIS 284 (1993).

Landlord and tenant branch was not deprived of jurisdiction to enter an order for damages for back rent sought by landlord, even though tenant surrendered possession after landlord brought action seeking possession and damages, and though action only seeking money damages would not have been assigned to landlord and tenant branch, since claim could not be defeated by voluntary act of tenant which satisfied only portion of relief sought. Landlord and Tenant Rule 1. *Millman Broder &*

Curtis v. Antonelli, 489 A.2d 481, 1985 D.C. App. LEXIS 348 (1985).

Landlord and tenant branch was not required to transfer action to civil division, when tenant had surrendered premises, so that only remaining issue was landlord's claim for monetary relief, since to have referred motion for summary judgment brought by landlord to another branch would have been a waste of judicial resources. *Millman Broder & Curtis v. Antonelli*, 489 A.2d 481, 1985 D.C. App. LEXIS 348 (1985).

— Probate division, divisions of court.

The Probate Division of the Superior Court of the District of Columbia has subject matter jurisdiction over the estate of any decedent who was domiciled in the District of Columbia at the time of death. *Valentine v. Elliott* (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Probate Division of Superior Court of District of Columbia, under its general subject matter jurisdiction over estate of decedent who had been domiciled in District of Columbia at time of his death, also had more specific subject matter jurisdiction over dispute regarding ownership of funds from jointly-registered credit union account and cash management account maintained in Virginia. *Valentine v. Elliott* (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Probate Division of Superior Court has subject matter jurisdiction over estate of any decedent who was domiciled in District of Columbia at time of death. *Dennis v. Edwards*, 831 A.2d 1006, 2003 D.C. App. LEXIS 557 (2003).

Probate Division had jurisdiction over heir hunter corporation's action to enforce rights under assignments of heirs' interests in estate; the dispute over the validity of the assignments would determine disbursement of estate funds and was fundamentally a probate matter. *Brandenburger & Davis, Inc. v. Estate of Lewis*, 771 A.2d 984, 2001 D.C. App. LEXIS 85 (2001).

Probate Division has no jurisdiction over real property which descends by operation of law under the intestate succession statutes unless the property must be sold in order to pay the estate's debts. D.C. Code 1981, §§ 18-607, 18-609. In re Tyree, 493 A.2d 314, 1985 D.C. App. LEXIS 393 (1985).

Provision of the District of Columbia Court Reform and Criminal Procedure Act of 1970 vesting the superior court of the District of Columbia with jurisdiction over any matter involving the rendition of accounts by trustees

required to account to the court was not limited to the historical distinction between matters within the probate and equity jurisdictions of the court and, hence, was not limited to probate matters, but included the filings of accounts by trustees and was a basis for the probate division of the superior court of the District of Columbia to assume jurisdiction of the petitions wherein trustees of four different trusts sought approval of the annual accountings rendered by them. D.C. Code 1981, § 11-921(a)(5)(A)(vii). In re Estate of Shutack, 469 A.2d 427, 1983 D.C. App. LEXIS 521 (1983).

Where interest in orderly judicial procedure required that status of alleged common-law wife, who brought action before family division to annul decedent's marriage as having been void ab initio, to declare herself as decedent's lawful widow, and to declare their children to be lawful heirs of decedent, as widow first be determined by probate division of superior court, appropriate remedy was to transfer the case to the probate division rather than to dismiss the action. Andrade v. Jackson, 401 A.2d 990, 1979 D.C. App. LEXIS 363 (1979).

Interests in orderly judicial procedure are best served if person's status as lawful widow, heir, or stranger to intestate be considered in first instance by division of superior court established for that purpose, the probate division. D.C. Code §§ 11-504, 11-902. Andrade v. Jackson, 401 A.2d 990, 1979 D.C. App. LEXIS 363 (1979).

Family division of superior court had jurisdiction to annul marriage of decedent, even though primary object of action was to bar decedent's putative wife from participation in his intestate estate, and to declare alleged common-law wife to be his lawful widow, but where estate owned cause of action which could bring substantial amount of money into the estate, interest in orderly judicial procedure in determining whether alleged common-law wife of decedent was his lawful widow and, consequently, whether she could bring wrongful death action on her own behalf and that of children allegedly fathered by decedent required that her status be resolved in first instance by probate division of superior court. D.C. Code §§ 11-504, 11-902. Andrade v. Jackson, 401 A.2d 990, 1979 D.C. App. LEXIS 363 (1979).

Garnishment.

Pro se debtor was not entitled to default judgment against government employer, in action alleging violation of his civil rights and District of Columbia law, in connection with garnishment of his wages to satisfy his student loan debt, although employer did not file answer to complaint on time, where employer submitted a motion for extension of time to respond to complaint one day after response

deadline and before debtor filed motion for default judgment, employer presented good faith explanation for their delay, debtor sustained no prejudice, and employer asserted potentially meritorious defense in action. Savage v. Scales, 310 F.Supp.2d 122, 2004 U.S. Dist. LEXIS 4091 (2004).

Higher Education Act (HEA) garnishment provision, authorizing administrative garnishment of wages for collection of federally guaranteed student loan debts, notwithstanding any provision of state law, expressly preempted District of Columbia wage garnishment statute, so that state guaranty agency was not required to comply with District of Columbia statute prior to garnishing student loan debtor's wages, where notice of garnishment order referenced Act provision. Savage v. Scales, 310 F.Supp.2d 122, 2004 U.S. Dist. LEXIS 4091 (2004).

In general.

Question what term "civil action" means in a given instance is one of statutory interpretation in light of the context, purposes of law and circumstances under which words were employed. Rieser v. District of Columbia, 580 F.2d 647, 1978 U.S. App. LEXIS 11361 (C.A.D.C. 1978).

Courts of District of Columbia are open to citizens of each of states. D.C. Code 1951, § 11-308; 18 U.S.C. §§ 1332, 1391. Western Urn Mfg. Co. v. American Pipe & Steel Corp., 284 F.2d 279, 1960 U.S. App. LEXIS 3637 (C.A.D.C. 1960).

Case remand does not permit the trial court to act as if the appeal had not taken place; rather, a case remand, unlike a record remand, allows the trial court to amend the ruling that was reviewed and found wanting on appeal, and to conduct the balance of the proceedings to final judgment. Jung v. Jung, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Scope of the trial court's authority following case remand is necessarily limited by appellate jurisdiction and instructions. Jung v. Jung, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Generally, the trial court has considerable discretion in determining how it shall proceed in a particular case. In re A.W.K., 778 A.2d 314, 2001 D.C. App. LEXIS 159 (2001).

Superior Court's jurisdiction under statute, providing that Superior Court has jurisdiction of any civil action or other matter at law or in equity brought in the District of Columbia, presumptively extends to claims for equitable relief from allegedly unlawful actions by public officials. D.C. Code 1981, § 11-921(a). Martin v. District of Columbia Courts, 753 A.2d 987, 2000 D.C. App. LEXIS 107 (2000).

Both the ordinary practice for dealing with misdirected pleadings and the exception for the Corporation Counsel are, in general, entirely

within the Superior Court's authority to establish orderly judicial procedure. *District of Columbia v. Gramkow*, 722 A.2d 1252, 1998 D.C. App. LEXIS 250 (1998).

Whether superior court accepts jurisdiction over claim is primarily threshold matter, determined when parties file pleadings and pretrial motions. Civil Rules 8(a)(1), 12(b)(1), (h)(3); D.C. Code 1981, § 11-921. *King v. Kidd*, 640 A.2d 656, 1993 D.C. App. LEXIS 213 (1993).

Superior Court for the District of Columbia is empowered to hear civil actions in which Washington Metropolitan Area Transit Authority (WMATA) is a party. D.C. Code 1981, § 1-2439. *Colbert v. United States*, 601 A.2d 603, 1992 D.C. App. LEXIS 18 (1992).

Superior court did not have jurisdiction over suit between subcontractor, who performed work for United States Postal Service, and general contractor's surety on payment bond, where provisions of Miller Act were applicable to such suit. *Miller Act*, §§ 1 et seq., 2, 40 U.S.C. §§ 270a et seq., 270b. *Fidelity & Deposit Co. v. Stromberg Sheet Metal Works, Inc.*, 532 A.2d 676, 1987 D.C. App. LEXIS 474 (1987).

The clearly expressed objectives of Congress in its enactment of the District of Columbia Court Reform and Criminal Procedure Act of 1970, to relieve the federal courts of the District of matters more suitable for resolution in the local courts, must take precedence over whatever was the historical practice prior to the enactment. D.C. Code 1981, § 11-921(a)(5)(A)(vii). *In re Estate of Shutack*, 469 A.2d 427, 1983 D.C. App. LEXIS 521 (1983).

District of Columbia Workers' Compensation Act did not increase jurisdiction of District of Columbia courts in violation of section of District of Columbia Self-Government and Governmental Reorganization Act which prohibited District of Columbia Council from enacting any act, resolution, or rule relating to organization and jurisdiction of District of Columbia courts where enforcement of a compensation order fell within already existing jurisdiction vested in District of Columbia Superior Court, and where review of final compensation orders by District of Columbia Court of Appeals fell within preexisting jurisdiction of such court to review administrative proceedings. D.C. Code 1981, §§ 1-233(a)(4), 11-722, 11-921(a), 36-322(b)(3), (c). *District of Columbia v. Greater Washington Cent. Labor Council*, 442 A.2d 110, 1982 D.C. App. LEXIS 288 (1982), writ of certiorari denied by 460 U.S. 1016, 103 S. Ct. 1261, 75 L. Ed. 2d 487, 1983 U.S. LEXIS 3736, 51 U.S.L.W. 3634 (1983).

District of Columbia Superior Court is authorized under federal law to issue writs of habeas corpus ad prosequendum. D.C. Code § 11-901; 18 U.S.C. § 1651; District of Columbia Court Reform and Criminal Procedure Act of 1970, 84

Stat. 473. *United States v. Palmer*, 393 A.2d 143, 1978 D.C. App. LEXIS 343 (1978).

Jurisdiction, generally.

To avoid dismissal, subject matter jurisdiction must have existed on date that lawsuit was filed. *Arnold v. District of Columbia*, 211 F.Supp.2d 144, 2002 U.S. Dist. LEXIS 13709 (2002).

The Superior Court has jurisdiction over claims that sound in equity. *Prince Constr. Co. v. District of Columbia Contract Appeals Bd.*, 892 A.2d 380, 2006 D.C. App. LEXIS 28 (2006).

A motion to dismiss based on lack of subject matter jurisdiction may be either a facial attack on the allegation of jurisdiction in the complaint, or a factual attack on the basis of the court's jurisdiction. *Heard v. Johnson*, 810 A.2d 871, 2002 D.C. App. LEXIS 656 (2002).

A facial attack on court's subject matter jurisdiction requires an appellate court to determine jurisdiction by looking only at the face of the complaint and taking the allegations in the complaint as true, while a factual attack may occur at any stage of the proceedings and plaintiff bears the burden of proof that jurisdiction does in fact exist. *Heard v. Johnson*, 810 A.2d 871, 2002 D.C. App. LEXIS 656 (2002).

On a motion to dismiss for lack of subject matter jurisdiction, the crucial question is whether a court can conclude from reading the complaint that the claim falls within the trial court's constitutionally circumscribed secular jurisdiction. *Heard v. Johnson*, 810 A.2d 871, 2002 D.C. App. LEXIS 656 (2002).

Pastor, who brought defamation against trustees of church for whom he was employed, failed to plead specific and unequivocal facts necessary to establish court's jurisdiction to hear such claim, and thus trial court erred in denying trustees' motion to dismiss based on immunity under the Free Exercise Clause of First Amendment; although pastor claimed that manual that documented the grievances against pastor, which contained the reasons why pastor was dismissed and attempts congregation made to remove pastor, was inappropriately published, pastor never denoted to whom manual was published, never alleged publication to anyone other than members of church to whom pastor was employed, and pastor made no claim that the alleged defamation involved unusual or egregious circumstances. *Heard v. Johnson*, 810 A.2d 871, 2002 D.C. App. LEXIS 656 (2002).

Wife of foreign ambassador was member of the family of member of diplomatic mission for purposes of federal statute providing that federal district courts have original jurisdiction, exclusive of courts of the states, of all civil actions against members of a mission or members of their families, and as such, this federal statute divested Superior Court of the District

of Columbia of subject matter jurisdiction over motorist's action against ambassador's wife for damages sustained in automobile collision, and wife's failure to plead lack of jurisdiction in the first instance did not invest Superior Court with jurisdiction. *Slater v. Biehl*, 793 A.2d 1268, 2002 D.C. App. LEXIS 65 (2002).

Where substantial question exists as to court's subject matter jurisdiction, it is court's obligation to raise it, *sua sponte*, even though no party has asked court to consider it. In re D.M., 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

Without jurisdiction, court cannot proceed at all in any cause. In re D.M., 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

Jurisdiction is power to declare law, and when it ceases to exist, only function remaining to court is that of announcing the fact and dismissing the cause. In re D.M., 771 A.2d 360, 2001 D.C. App. LEXIS 93 (2001).

Since amount in controversy did not exceed \$2,000, and since the action did not affect any interest in real property and was for the recovery of money only, exclusive jurisdiction was within the Small Claims and Conciliation Branch. *Robinson v. Roberts*, 122 WLR 521 (Super. Ct. 1994).

There does not need to be some minimum contact with the District of Columbia before the Superior Court can exercise its civil jurisdiction; a transitory cause of action may be brought in any court of general jurisdiction where jurisdiction over the defendant can be obtained. *Robinson v. Roberts*, 122 WLR 521 (Super. Ct. 1994).

Statute providing that Superior Court may not vacate a judgment foreclosing right of redemption unless jurisdiction was lacking or there was fraud in foreclosure, which limits or otherwise overrides Superior Court's ability to vacate judgments under rule of civil procedure setting forth six grounds for relief from a final judgment, restricts Superior Court's equity jurisdiction and, thus, violates provision of Home Rule Act that prohibits District of Columbia Council from enacting any law with respect to congressional provisions relating to jurisdiction of the District of Columbia courts. *Shoetan v. Link, et al.*, 137 WLR 2685 (Super. Ct. 2009).

Matters involving trustees.

Provision of the District of Columbia Court Reform and Criminal Procedure Act of 1970 vesting the superior court of the District of Columbia with jurisdiction over any matter involving trustees required to account to the court if begun in the United States District Court for the District of Columbia and not completed in that court but for the expiration of a 30-month period could not be read as only conferring jurisdiction over cases which had both then begun and still were not completed in

the District Court within the 30-month transition period after enactment of the Act, but was to be read as including any matters that had begun at any time in the past and, hence, as including petitions by trustees of four different trusts for approval of the annual accountings rendered by them. D.C. Code 1981, § 11-921(a)(5)(B), (b), (b)(2). In re Estate of Shutack, 469 A.2d 427, 1983 D.C. App. LEXIS 521 (1983).

Trust matters are the type of local matter that Congress intended the Superior Court to adjudicate. *Brown v. Edes Home*, 118 WLR 1277 (Super. Ct. 1990).

Parallel to state court.

Courts of District of Columbia have local jurisdiction precisely as though they were courts of one of states. D.C. Code 1951, § 11-308; 18 U.S.C. §§ 1332, 1391. *Western Urn Mfg. Co. v. American Pipe & Steel Corp.*, 284 F.2d 279, 1960 U.S. App. LEXIS 3637 (C.A.D.C. 1960).

The jurisdiction of the superior court and the District of Columbia Court of Appeals is parallel to that of a state court. *National Asso. of Broadcast Employees & Technicians v. Timberlake*, 409 A.2d 629, 1979 D.C. App. LEXIS 523 (1979).

Purpose of District of Columbia Court Reform and Criminal Procedure Act is to transfer to the superior court all those cases which, in other jurisdictions, would fall to the state courts. D.C. Code § 16-701 et seq. *Davis v. United States*, 397 A.2d 951, 1979 D.C. App. LEXIS 277 (1979).

Tax proceedings.

District of Columbia courts have exclusive jurisdiction over challenges to assessments and claims for refunds of District of Columbia taxes. *Jenkins v. Washington Convention Ctr.*, 236 F.3d 6, 2001 U.S. App. LEXIS 576 (C.A.D.C. 2001).

Federal district court was precluded from exercising jurisdiction over action brought by members of unincorporated businesses (UB) seeking declaratory judgment that imposition of District of Columbia's UB franchise tax on them, as non-resident members of a UB, was unlawful under the federal Constitution and District of Columbia's Home Rule Act; District of Columbia's jurisdiction granting code provisions vested its Superior Court with exclusive jurisdiction regarding review of the validity or amount of District of Columbia tax assessments, including federal and constitutional issues, and, while business members argued they were challenging the imposition of a tax, rather than the assessment, the common legal definition of "assessment" included imposition of a tax, and the members had to be challenging their actual tax liability as assessed in order to

have standing. *Fernebok v. District of Columbia*, 534 F.Supp.2d 25, 2008 U.S. Dist. LEXIS 5069 (2008), affirmed by 2008 U.S. App. LEXIS 13611 (D.C. Cir. June 24, 2008).

Trade actions.

There was no private right of action and superior court was without jurisdiction over action brought under Federal Trade Commission Act to enjoin alleged unfair methods of competition and deceptive acts and practices. Federal Trade Commission Act, §§ 1 et seq., 5, 6, 15 U.S.C. §§ 41 et seq., 45, 46. *Karpoff v. Holladay Corp.*, 377 A.2d 52, 1977 D.C. App. LEXIS 366 (1977).

Transition.

To achieve the gradual transfer of all matters of a local nature away from the federal to the local court, the District of Columbia Court Reform and Criminal Procedure Act of 1970 provided for transition periods during which the United States District Court for the District of Columbia had temporary jurisdiction over certain matters and after which the matters were within the exclusive jurisdiction of the superior court of the District of Columbia. D.C.

Code 1981, § 11-921(a)(5)(B), (b), (b)(2). In re Estate of Shutack, 469 A.2d 427, 1983 D.C. App. LEXIS 521 (1983).

Plaintiff who had commenced personal injury action in Court of General Sessions, which had jurisdictional limit of \$10,000, could not recover amount in excess of \$10,000 although case was tried in Superior Court, which was statutory successor to Court of General Sessions and had higher jurisdictional limit. D.C. Code SCR, Civil Rule 46; D.C. Code §§ 11-921, 11-922, 16-2341. *Newman v. Coakley*, 285 A.2d 690, 1972 D.C. App. LEXIS 322 (1972).

Subsection (a)(5)(B) of this section refers to any matter begun and not completed in the 30-month period following the effective date of the District of Columbia Court Reorganization Act of 1970. *Chumbris v. Chaconas*, 110 WLR 1521 (Super. Ct.).

The District of Columbia Court Reorganization Act of 1970 did not vest in the Superior Court trust cases in existence before the effective date of the Act, nor vest any jurisdiction at all in the Probate Division of Superior Court over trust cases. *Chumbris v. Chaconas*, 110 WLR 1521 (Super. Ct.).

§ 11-922. Transfer of civil actions to Superior Court.

(a) In a civil action begun in the United States District Court for the District of Columbia before the effective date of the District of Columbia Court Reorganization Act of 1970 (other than an action for equitable relief), where it appears to the satisfaction of the court at or subsequent to any pretrial hearing but before trial thereof that the action will not justify a judgment in excess of \$10,000 and does not otherwise invoke the jurisdiction of the court, the court may certify the action to the Superior Court for trial.

(b) In a civil action begun in the United States District Court for the District of Columbia during the thirty-month period beginning on the effective date of the District of Columbia Court Reorganization Act of 1970, the court may certify the action to the Superior Court if it appears to the satisfaction of the United States District Court at or subsequent to any pretrial hearing, but before the trial thereof, that —

- (1) the action will not justify a judgment in excess of \$50,000; and
- (2) the action does not otherwise invoke the jurisdiction of the court.

(c) When an action is transferred under this section, the pleadings in the action, together with a copy of the docket entries and copies of any orders entered therein, and the deposit for costs, shall be sent to the Superior Court. The Superior Court shall thereafter treat the case as though it had been filed originally in that court, except that the jurisdiction of the court shall extend to the amount claimed in the action even though it exceeds the applicable jurisdictional limitation.

(July 29, 1970, 84 Stat. 486, Pub. L. 91-358, title I, § 111.)

Cross references. — District Charter provisions relating to jurisdiction of Superior Court, see § 1-204.31.

Prior Codifications. — 1981 Ed., § 11-922. 1973 Ed., § 11-922.

References in text. — “The effective date of

the District of Columbia Court Reorganization Act of 1970” referred to throughout this section, means, as set forth in § 199(c) of the Act, the first day of the seventh month which began after the enactment of the Act.

CASE NOTES

ANALYSIS

“Action” defined.
Equitable relief.
Federal question jurisdiction.
In general.
Review.

“Action” defined.

Question what term “civil action” means in a given instance is one of statutory interpretation in light of the context, purposes of law and circumstances under which words were employed. *Rieser v. District of Columbia*, 580 F.2d 647, 1978 U.S. App. LEXIS 11361 (C.A.D.C. 1978).

Phrase “civil action” as used in provision of Reorganization Act withholding from new local courts civil actions begun during 30-month transition period wherein amount in controversy exceeds \$50,000 should be given same meaning that it has under Federal Rules of Civil Procedure and should be interpreted as including third-party practice generated in the natural course of \$50,000-plus suits. *Fed. Rules Civ. Proc. rule 14*, 18 U.S.C.; D.C. Code § 11-501(4). *Rieser v. District of Columbia*, 580 F.2d 647, 1978 U.S. App. LEXIS 11361 (C.A.D.C. 1978).

“Action” as used in statute governing civil actions begun in the United States District Court for the District of Columbia during 30-month period beginning on effective date of the District of Columbia Court Reorganization Act does not refer only to case prior to rulings and interlocutory orders, but refers to case in any posture prior to disposition and permits transfer to superior court of case in its interlocutory posture period. D.C. Code § 11-922(b). *Reichman v. Franklin Simon Corp.*, 392 A.2d 9, 1978 D.C. App. LEXIS 317 (1978).

Equitable relief.

Action which was brought by borrowers against corporate lender and which alleged, inter alia, that lender had made loans requiring payment of interest in excess of statutory eight per cent limit, was not certifiable to the Superior Court under District of Columbia Code provision that “In a civil action begun in the United States District Court for the District of Columbia before the effective date of the District of Columbia Reorganization Act of 1970 (other than an action for equitable relief). .. the

court may certify the action to the Superior Court for trial,” since the complaint sought substantial declaratory and equitable relief, including injunctions and cancellation of notes and deeds of trust. D.C. Code § 11-922(a). *Hines v. City Finance Co.*, 474 F.2d 430, 1972 U.S. App. LEXIS 6611 (C.A.D.C. 1972).

Under District of Columbia Code provision that “In a civil action begun in the United States District Court for the District of Columbia before the effective date of the District of Columbia Reorganization Act of 1970 (other than an action for equitable relief). .. the court may certify the action to the Superior Court for trial,” the parenthetical phrase is not intended to cover what is essentially a legal action which seeks equitable relief only of a character incidental to the main legal thrust of the action; on the other hand, if substantial equitable relief is sought as such, the District Court should retain jurisdiction even though legal relief is also sought. D.C. Code § 11-922(a). *Hines v. City Finance Co.*, 474 F.2d 430, 1972 U.S. App. LEXIS 6611 (C.A.D.C. 1972).

Federal question jurisdiction.

Where individuals, who were allegedly arrested during the “Mayday Demonstrations” of May, 1971, asserted claims against District of Columbia police officers and chief of police which arose directly under Fourth and Fifth Amendments, the United States District Court had “federal question” jurisdiction and it was improper to certify the cases against the District of Columbia defendants to the Superior Court for the District of Columbia. D.C. Code §§ 11-101 et seq., 11-922(b); 18 U.S.C. § 1331(a); *Fed. Rules Civ. Proc. rule 56*, 18 U.S.C.; U.S. Const. Amends. 4, 5. *Apton v. Wilson*, 506 F.2d 83, 1974 U.S. App. LEXIS 7184 (C.A.D.C. 1974).

Where individuals, who were allegedly arrested during the “Mayday Demonstrations” of May, 1971, asserted claims against District of Columbia police officers and chief of police which arose directly under Fourth and Fifth Amendments, the United States District Court had “federal question” jurisdiction and it was improper to certify the cases against the District of Columbia defendants to the Superior Court for the District of Columbia. D.C. Code §§ 11-101 et seq., 11-922(b); 18 U.S.C. § 1331(a); *Fed. Rules Civ. Proc. rule 56*, 18

U.S.C.; U.S. Const. Amends. 4, 5. *Apton v. Wilson*, 506 F.2d 83, 1974 U.S. App. LEXIS 7184 (C.A.D.C. 1974).

In general.

Where Pennsylvania resident brought negligence action against District of Columbia residents during 30-month transition period of Reorganization Act and filed separate negligence pleading arising out of same events against District of Columbia after transition period but, by accompanying complaint with notice of related cases and motion to consolidate which was granted, accomplished same objective as third-party complaint, federal district court had jurisdiction over claims against District pursuant to section of Reorganization Act withholding from new local courts civil actions begun during 30-month transition period. D.C. Code § 11-501(4); Fed. Rules Civ. Proc. rules 14(a), 42(a), 18 U.S.C. *Rieser v. District of Columbia*, 580 F.2d 647, 1978 U.S. App. LEXIS 11361 (C.A.D.C. 1978).

The United States District Court for the District of Columbia may certify cause to the Superior Court of the District of Columbia only if the District Court finds that the amount in controversy is not satisfied and that federal jurisdiction is not otherwise invoked. D.C. Code §§ 11-101 et seq., 11-922(b); 18 U.S.C. § 1331(a); Fed. Rules Civ. Proc. rule 56, 18 U.S.C. *Apton v. Wilson*, 506 F.2d 83, 1974 U.S. App. LEXIS 7184 (C.A.D.C. 1974).

Exercise of general authority to certify cases to courts of local jurisdiction rests in sound discretion of district court. D.C. Code § 11-922(b); 18 U.S.C. §§ 1331, 1332, 1343(3, 4); 42 U.S.C. § 1983. *James v. Lusby*, 499 F.2d 488, 1974 U.S. App. LEXIS 9022 (C.A.D.C. 1974).

On record indicating that plaintiff in civil rights action had shouted obscenity and expletives at police officer at downtown intersection, that plaintiff failed to appear to contest charge of disorderly conduct or seek equitable relief in superior court upon showing of lack of culpability and that plaintiff was apparently not distressed by handcuffs or interrogation, district court did not abuse discretion in certifying record to superior court of the District of Columbia, even without permitting further opportunity to reformulate complaint, for insufficiency of amount in controversy. D.C. Code §§ 11-922(b), 11-962, 22-1107; 18 U.S.C. §§ 1331, 1332, 1343(1, 3, 4); 42 U.S.C. §§ 1981,

1983. *James v. Lusby*, 499 F.2d 488, 1974 U.S. App. LEXIS 9022 (C.A.D.C. 1974).

Federal district court's certification to superior court of action by owners of apartment building to recover unincorporated franchise taxes paid under protest, for no reason other than the conclusion that the action would not justify a judgment in excess of \$50,000 exclusive of interest and costs, was an abuse of discretion where it did not appear that the amount paid in satisfaction of the deficiency was less than \$50,000 and District of Columbia did not maintain that the amount in controversy was less than \$50,000. D.C. Code §§ 11-922, 47-1557b(a)(7, 15). *Block v. District of Columbia*, 492 F.2d 646, 1974 U.S. App. LEXIS 10299 (C.A.D.C. 1974).

Proceedings related to annual accountings of trust, where case had begun prior to February 1, 1971 and was not completed prior to August 1, 1973, would appropriately be transferred to superior court of the District of Columbia, from federal district court in the District of Columbia. D.C. Code §§ 11-101 et seq., 11-501, 11-504, 11-921(a)(5, 6), (a)(5)(A)(vii), (a)(5)(B), (b). *Shutack v. Shutack*, 516 F. Supp. 219, 1981 U.S. Dist. LEXIS 12857 (1981).

Cases transferred under statute governing civil actions begun in the United States District Court for the District of Columbia during 30-month period beginning on effective date of District of Columbia Court Reorganization Act are to be treated as if they had been brought initially in superior court. D.C. Code § 11-922(b). *Reichman v. Franklin Simon Corp.*, 392 A.2d 9, 1978 D.C. App. LEXIS 317 (1978).

Where the United States district court has entered an interlocutory order, subsequent transfer of case under statute governing civil actions begun in the United States District Court for the District of Columbia during 30-month period beginning with effective date of the District of Columbia Court Reorganization Act empowers superior court to treat order as its own, and empowers District of Columbia Court of Appeals to review order on appeal. D.C. Code § 11-922(b). *Reichman v. Franklin Simon Corp.*, 392 A.2d 9, 1978 D.C. App. LEXIS 317 (1978).

Review.

Standard for review of order of certification from district court to superior court is whether or not the trial court abused its discretion. D.C. Code §§ 11-501(4), 11-922(b). *Block v. District of Columbia*, 492 F.2d 646, 1974 U.S. App. LEXIS 10299 (C.A.D.C. 1974).

§ 11-923. Criminal jurisdiction; commitment.

(a) The Superior Court has jurisdiction over all criminal cases pending in the District of Columbia Court of General Sessions before the effective date of the District of Columbia Court Reorganization Act of 1970.

(b)(1) Except as provided in paragraph (2), the Superior Court has jurisdiction of any criminal case under any law applicable exclusively to the District of Columbia.

(2) The Superior Court shall not have jurisdiction of any criminal case under any law applicable exclusively to the District of Columbia begun in the United States District Court for the District of Columbia under section 11-502(2) by the return of an indictment or the filing of an information during the eighteen-month period beginning on such effective date.

(c)(1) With respect to any criminal case over which the Superior Court has jurisdiction, that court may make preliminary examinations and commit offenders, either for trial or for further examination, and may release or detain offenders in accordance with Chapter 13 of Title 23.

(2) With respect to any criminal case over which the United States District Court for the District of Columbia has jurisdiction, the Superior Court (A) may make preliminary examinations and commit offenders, either for trial or for further examination, but only during the eighteen-month period beginning on the effective date of the District of Columbia Court Reorganization Act of 1970, and (B) may release or detain offenders in accordance with Chapter 13 of Title 23.

(July 29, 1970, 84 Stat. 486, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-923. 1973 Ed., § 11-923.

References in text. — “The effective date of the District of Columbia Court Reorganization

Act of 1970,” referred to throughout this section, means, as set forth in § 199(c) of the Act, the first day of the seventh month which began after the enactment of the Act.

CASE NOTES

ANALYSIS

Assaults.
Burden of proof.
Definitions.
Geographical limits of jurisdiction.
In general.
Judicial notice.
Jurisdiction of various criminal charges.
Presumptions.
Validity.

Assaults.

If superior court were constitutionally barred from exercising jurisdiction over assaults on correctional officers outside District of Columbia, such bar would have no effect on its jurisdiction over such assaults inside District. D.C. Code 1973, § 22-505(a); U.S. Const. Art. 1, § 8, cl. 17. *Jackson v. United States*, 441 A.2d 1000, 1982 D.C. App. LEXIS 286 (1982).

Statute providing that superior court has jurisdiction of any criminal case under any law applicable exclusively to District of Columbia vests jurisdiction in superior court to try assaults on correctional officers charged under statute prohibiting such assaults when assault

was committed within geographical boundaries of city. D.C. Code 1973, §§ 11-923(b)(1), 22-505(a). *Jackson v. United States*, 441 A.2d 1000, 1982 D.C. App. LEXIS 286 (1982).

Superior court properly exercised jurisdiction over prosecution for assault on District of Columbia correctional officer by defendant who allegedly attacked two members of correctional force with steel bar. D.C. Code 1973, §§ 11-923(b)(1), 22-505(a). *Jackson v. United States*, 441 A.2d 1000, 1982 D.C. App. LEXIS 286 (1982).

Burden of proof.

Subject matter jurisdiction in a criminal case must always be proven beyond a reasonable doubt, but it can be shown by indirect evidence and inferences reasonably drawn from that evidence. *Long v. United States*, 940 A.2d 87, 2007 D.C. App. LEXIS 667 (2007), amended by 2008 D.C. App. LEXIS 88 (D.C. Feb. 28, 2008).

Defendant, as party asserting lack of jurisdiction on ground that offenses in question occurred only in Maryland bore burden of presenting facts which would establish that lack, and same was particularly true when jurisdictional challenge was to court exercising general

jurisdiction. D.C. Code § 11-923(b)(1); D.C. Code SCR, Criminal Rule 12(b)(2). *Adair v. United States*, 391 A.2d 288, 1978 D.C. App. LEXIS 567 (1978).

Definitions.

Within statute providing that superior court has jurisdiction of any criminal case under any law applicable exclusively to District of Columbia, "any law" does not mean "any statute" but means any distinct, self-contained directive or prohibition; thus it is not required that a statutory section in its entirety apply exclusively to district in order for superior court to have jurisdiction of any prohibition in unseverable statute. D.C. Code §§ 11-923(b)(1), 22-505(a). *United States v. Thompson*, 347 A.2d 581, 1975 D.C. App. LEXIS 276 (1975).

Geographical limits of jurisdiction.

Defendant's use of Maryland victim's motor vehicle occurred in District of Columbia, within meaning of statutes governing theft and unauthorized use of motor vehicle, as required for superior court to have subject matter jurisdiction to prosecute offense; although defendant took possession of victim's car in Maryland, police officers stopped and arrested defendant while he was using victim's car without her permission within District of Columbia. *Dobyns v. United States*, 30 A.3d 155, 2011 D.C. App. LEXIS 614 (2011).

Prosecution for obstruction of justice, arising from murder in Maryland of witness to triple murder in District of Columbia that was under investigation at time witness was murdered, did not violate rule of vicinage or jurisdictional statute, as proceeding that defendant sought to obstruct, i.e., investigation of triple murder, was pending in District of Columbia. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Statute vesting original jurisdiction over local matters in the Superior Court of the District of Columbia does not limit Superior Court to jurisdiction over criminal prosecutions only when the case may be brought exclusively within the District of Columbia. D.C. Code 1981, § 11-923. *Colbert v. United States*, 601 A.2d 603, 1992 D.C. App. LEXIS 18 (1992).

Statute vesting the superior court with jurisdiction of any criminal case under any law applicable exclusively to the District of Columbia operates to limit the jurisdiction of the criminal division of the superior court to criminal acts which occur within the geographical boundaries of the District of Columbia. D.C. Code 1981, § 22-2202. *James v. United States*, 478 A.2d 1083, 1984 D.C. App. LEXIS 440 (1984).

Although District of Columbia statute limits jurisdiction of criminal division of superior court to criminal acts which occur within geo-

graphical boundaries of District of Columbia, criminal act alone need not constitute offense but may serve as one of several constituent elements to complete offense. U.S. Const. Art. 3, § 2, cl. 3; Amend. 6; D.C. Code 1973, § 11-923(b)(1). *United States v. Baish*, 460 A.2d 38, 1983 D.C. App. LEXIS 363 (1983).

Proof that either utterance or communication of threatening language occurred within District of Columbia establishes basis for prosecution in District of Columbia Superior Court under statute proscribing making of threats to do bodily harm. U.S. Const. Art. 3, § 2, cl. 3; Amend. 6; D.C. Code 1973, §§ 22-507, 11-923(b)(1). *United States v. Baish*, 460 A.2d 38, 1983 D.C. App. LEXIS 363 (1983).

District of Columbia Superior Court had jurisdiction over violations of District criminal statutes committed on Air Force base located within District, even though Air Force base was federally owned and defendant could have been prosecuted for violations of federal statutes. U.S. Const. Art. 1, § 8, cl. 17; D.C. Code 1973, § 11-923(b)(1). *McEachin v. United States*, 432 A.2d 1212, 1981 D.C. App. LEXIS 312 (1981).

Statutory provisions limiting criminal division jurisdiction to offenses committed within the District's boundaries did not apply, on theory that delinquency adjudication presupposed commission of criminal acts, to delinquency proceedings and thus did not limit delinquency petitions to violations that occurred within boundaries of the District of Columbia. D.C. Code §§ 11-923(b)(1), 11-1101, 11-1101(13), 16-2301(6, 7). *In re W.*, 391 A.2d 1385, 1978 D.C. App. LEXIS 315 (1978).

In view of defendant's concession that he approached complainant in his car within district, rode with complainant into Maryland and returned with him to district, and in view of fact that defendant was overheard by officer threatening complainant with injury if he did not remain silent while they were all at intersection concededly within district line, trial court did not lack jurisdiction of offenses of armed robbery, assault with dangerous weapon and mayhem and malicious disfigurement. D.C. Code §§ 11-923(b)(1), 22-502, 22-506, 22-2901, 22-3202; D.C. Code SCR, Criminal Rule 12(b)(2). *In re W.*, 391 A.2d 1385, 1978 D.C. App. LEXIS 315 (1978).

In general.

Application for writ of mandamus, filed in District of Columbia Court of Appeals, did not deprive Superior Court of District of Columbia of its general criminal jurisdiction over defendant, and thus judges of Superior Court were not deprived of judicial immunity. D.C. Code § 11-923(b)(1). *Clark v. Taylor*, 627 F.2d 284, 1980 U.S. App. LEXIS 20124 (C.A.D.C. 1980).

Superior court now has exclusive original jurisdiction over all local criminal matters, and

no jurisdiction to try those charged with offenses defined in the United States Code. D.C. Code §§ 11-502, 11-721, 11-923. *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

Statute providing that, subject to exception, superior court of District of Columbia has jurisdiction of any criminal case under any law applicable exclusively to the District, whether or not such statute divests superior court of jurisdiction of District of Columbia Code offenses that have extraterritorial effect, was most certainly intended to divest that court of jurisdiction to hear criminal cases involving United States Code offenses. D.C. Code §§ 11-301(1, 2), 11-501, 11-502, 11-921 to 11-923, 11-923(b)(1), (c)(2). *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

Court Reform Act attempted to eliminate certain jurisdictional anomalies as well as substantial grants of concurrent jurisdiction by assimilating jurisdiction of district court and Court of Appeals to that of their federal counterparts elsewhere and by endowing superior court and District of Columbia Court of Appeals with powers similar to those of state courts. D.C. Code §§ 11-502, 11-721, 11-923. *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

Congress provided for gradual conversion of local jurisdiction of district and superior courts of District of Columbia so as to avoid risk not only of substantial dislocation but also of prejudice to those already litigating in what was to become exclusively "local" system. D.C. Code §§ 11-102, 11-301, 11-501 to 11-503, 11-921, 11-923; 18 U.S.C. § 1257. *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

Overarching congressional intent was that courts in District of Columbia be reconstituted into separate and independent systems, one local, and the other federal and freed of its local jurisdiction. D.C. Code §§ 11-102, 11-301, 11-301(1), 11-501 to 11-503, 11-921, 11-923; 18 U.S.C. § 1257. *Thompson v. United States*, 548 F.2d 1031, 1976 U.S. App. LEXIS 6102 (C.A.D.C. 1976).

Petitioner failed to allege facts sufficient to support assertion that Moorish-Americans were disadvantaged by United States Parole Commission's (USPC) enforcement of District of Columbia's supervised release statute, as required to state equal protection claim against USPC. *Smallwood v. United States Parole Comm'n*, 777 F.Supp.2d 148, 2011 U.S. Dist. LEXIS 41044 (2011).

Lack of subject matter jurisdiction is not waivable and may be raised at any time. *Long v. United States*, 940 A.2d 87, 2007 D.C. App.

LEXIS 667 (2007), amended by 2008 D.C. App. LEXIS 88 (D.C. Feb. 28, 2008).

Judicial notice.

Trial court could appropriately take judicial notice that location of charged offense of assault was within the District of Columbia based on geographic locations mentioned in testimony of witnesses. *Long v. United States*, 940 A.2d 87, 2007 D.C. App. LEXIS 667 (2007), amended by 2008 D.C. App. LEXIS 88 (D.C. Feb. 28, 2008).

Jurisdiction of various criminal charges.

Superior Court had jurisdiction over prosecution of defendants for alleged violations of statute setting forth offense of unlawful parading and assembling on United States Supreme Court grounds; statute provided that such violations could be prosecuted in Superior Court as well as in United States District Court, and statute governing jurisdiction of criminal cases provided that Superior Court had jurisdiction of any criminal case under any law applicable exclusively to the District of Columbia, and, by regulating only behavior on United States Supreme Court grounds, the law at issue was such a law. *Potts v. United States*, 919 A.2d 1127, 2007 D.C. App. LEXIS 153 (2007).

Trial court had territorial jurisdiction in first-degree sexual abuse case, even though defendant argued that sexual activity did not occur until he and victim were outside District of Columbia; use-of-force element of offense occurred in District when victim was ordered to get into prone position in van upon exiting apartment where other sexual activity had taken place and where she learned that defendant's companion in crime had gun. *Dyson v. United States*, 848 A.2d 603, 2004 D.C. App. LEXIS 202 (2004), writ of certiorari denied by 545 U.S. 1141, 125 S. Ct. 2962, 162 L. Ed. 2d 892, 2005 U.S. LEXIS 5075 (2005).

In determining whether a trial court has territorial jurisdiction, it is insufficient to show that part of the crime in question took place outside the District of Columbia's boundaries since a crime may be the result of a series of acts and the direct consequences may be made to occur at various times and in different localities. *Dyson v. United States*, 848 A.2d 603, 2004 D.C. App. LEXIS 202 (2004), writ of certiorari denied by 545 U.S. 1141, 125 S. Ct. 2962, 162 L. Ed. 2d 892, 2005 U.S. LEXIS 5075 (2005).

A prosecution for obstruction of justice may be brought in the district where the judicial proceeding that the accused sought to obstruct is pending, even if the obstructing acts took place in a different district. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Superior court has jurisdiction over prosecutions for conduct in Maryland which is designed to bribe witnesses in District of Columbia proceedings and thus to obstruct administration of justice in courts of District of Columbia. D.C. Code 1981, §§ 11-923(b), 22-722(a); Md.Code 1975, Art. 27, § 27. *Ford v. United States*, 616 A.2d 1245, 1992 D.C. App. LEXIS 297 (1992).

Superior Court of the District of Columbia had jurisdiction over criminal charge alleging that employee for Washington Metropolitan Area Transit Authority (WMATA) had solicited a bribe. D.C. Code 1981, §§ 1-2439, 22-712(a)(2). *Colbert v. United States*, 601 A.2d 603, 1992 D.C. App. LEXIS 18 (1992).

Statute proscribing interfering with member of police force operating in District of Columbia, proscribing assaulting district employee charged with supervision of juveniles confined in district facility located within District or elsewhere and proscribing assaulting member of fire department operating in District contains three different "laws," within statute providing that superior court has jurisdiction of any criminal case under any law applicable exclusively to District; thus superior court had jurisdiction of prosecution for assault on police officer in District, even if that court would have no jurisdiction over prosecution for assault on supervisor of confined juvenile on ground that it was an extraterritorial offense. D.C. Code § 22-505(a). *United States v. Thompson*, 347 A.2d 581, 1975 D.C. App. LEXIS 276 (1975).

Superior Court did not have jurisdiction over alleged violation of statute requiring that 15-day notice of any proposed demonstration be given general superintendent, National Capital Parks, National Park Service. D.C. Code §§ 11-923, 11-923(b)(1), 11-963(a). *Hubbell v. United States*, 289 A.2d 879, 1972 D.C. App. LEXIS 372 (1972).

Presumptions.

There is a presumption that an offense charged was committed within the jurisdiction of the court in which the charge is filed unless the evidence affirmatively shows otherwise. *Long v. United States*, 940 A.2d 87, 2007 D.C. App. LEXIS 667 (2007), amended by 2008 D.C. App. LEXIS 88 (D.C. Feb. 28, 2008).

Validity.

Under its constitutional power to legislate for the District of Columbia, Congress may provide for trying local criminal cases before judges who, in accordance with District of Columbia Code, are not accorded life tenure and protection against reduction in salary. U.S. Const. art. 1, § 8, cl. 17; art. 3, § 1 et seq. *Palmore v. United States*, 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342, 1973 U.S. LEXIS 78 (U.S. Dist. Col. 1973).

United States Parole Commission (USPC) did not violate separation of powers doctrine by issuing, pursuant to District of Columbia's supervised release statute, warrants for parolee's arrest or by finding probable cause to believe parolee committed offense as charged, since USPC exercised no judicial function and had no authority to impose prison sentence upon conviction of crime. *Smallwood v. United States Parole Comm'n*, 777 F.Supp.2d 148, 2011 U.S. Dist. LEXIS 41044 (2011).

United States Parole Commission (USPC) had full authority to grant, deny, or revoke a District of Columbia offender's parole and return offender to custody, thereby precluding habeas relief; USPC did not impinge on judiciary's authority, as parole revocation was separate administrative proceeding at which it determined whether offender would serve sentence in or out of prison, District of Columbia prisoners did not have constitutionally protected liberty interest in being released to parole and therefore had no due process protection with respect to parole determinations or procedures, and there was no double jeopardy protection against revocation of probation and imposition of imprisonment. *Brown v. U.S. Parole Comm'n*, 713 F.Supp.2d 11, 2010 U.S. Dist. LEXIS 50575 (2010).

Congress exercises exclusive control over District of Columbia pursuant to Constitution and may distribute judicial authority among courts and magistrates and regulate judicial proceedings in District in any way it sees fit as long as it does not contravene Constitution. D.C. Code 1973, § 22-505(a); U.S. Const. Art. 1, § 8, cl. 17. *Jackson v. United States*, 441 A.2d 1000, 1982 D.C. App. LEXIS 286 (1982).

Congress did not violate article of Constitution pertaining to the judicial power of the United States by vesting jurisdiction over local felonies in the District of Columbia Superior Court. U.S. Const. art. 3, §§ 1, 2; D.C. Code §§ 11-101(2), 11-703, 11-721, 11-904, 11-1502, 11-1521. *Palmore v. United States*, 290 A.2d 573, 1972 D.C. App. LEXIS 379 (1972), affirmed by 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342, 1973 U.S. LEXIS 78 (1973).

Action of Congress in creating District of Columbia Superior Court to hear and determine "local" crimes, without providing for lifetime tenure and undiminishable salary for judges, was a legitimate means to accomplish the end of creating a "local" court system under the district clause of the Constitution. U.S. Const. art. 1, § 8, cl. 17. *Palmore v. United States*, 290 A.2d 573, 1972 D.C. App. LEXIS 379 (1972), affirmed by 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342, 1973 U.S. LEXIS 78 (1973).

Congress, at least with respect to courts in the District of Columbia, is enabled by the district clause of the Constitution to confer a

“judicial power,” wholly separate and apart from its authority under article of Constitution to confer judicial power on inferior federal courts. U.S. Const. art. 1, § 8, cl. 17. *Palmore v.*

United States, 290 A.2d 573, 1972 D.C. App. LEXIS 379 (1972), affirmed by 411 U.S. 389, 93 S. Ct. 1670, 36 L. Ed. 2d 342, 1973 U.S. LEXIS 78 (1973).

§ 11-924. Jurisdiction with respect to violations of the Rules and Regulations of the Washington Metropolitan Area Transit Authority.

The Superior Court has jurisdiction with respect to any violation, committed in the District of Columbia, of the rules and regulations adopted by the Washington Metropolitan Area Transit Authority under section 76(e) of title III of the Washington Metropolitan Area Transit Regulation Compact.

(June 4, 1976, 90 Stat. 674, Pub. L. 94-306, § 3(a).)

Prior Codifications. — 1981 Ed., § 11-924. 1973 Ed., § 11-924.

References in text. — The Washington

Metropolitan Area Transit Regulation Compact, referred to at the end of this section, is codified in § 1-2431.

§ 11-925. Rules regarding certain pending child custody cases.

(a) In any pending case involving custody over a minor child or the visitation rights of a parent of a minor child in the Superior Court which is described in subsection (b) [of this section]—

(1) at anytime after the child attains 13 years of age, the party to the case who is described in subsection (b)(1) [of this section] may not have custody over, or visitation rights with, the child without the child’s consent; and

(2) if any person had actual or legal custody over the child or offered safe refuge to the child while the case (or other actions relating to the case) was pending, the court may not deprive the person of custody or visitation rights over the child or otherwise impose sanctions on the person on the grounds that the person had such custody or offered such refuge.

(b) A case described in this subsection is a case in which—

(1) the child asserts that a party to the case has been sexually abusive with the child;

(2) the child has resided outside of the United States for not less than 24 consecutive months;

(3) any of the parties to the case has denied custody or visitation to another party in violation of an order of the court for not less than 24 consecutive months; and

(4) any of the parties to the case has lived outside of the District of Columbia during such period of denial of custody or visitation.

(Sept. 30, 1996, 110 Stat. 2979, Pub. L. 104-205, § 350(a).)

Prior Codifications. — 1981 Ed., § 11-925.

Editor’s notes. — Bill of Attainder:

This section was held unconstitutional in *Foretich v. U.S.*, 351 F. 3d 1198 (D.C. Cir. 2003).

Elizabeth Morgan Act: Legislation that prohibited noncustodial parent from obtaining visitation with daughter against her wishes, and in face of unproven allegations of sexual abuse,

after she had turned thirteen, thereby effectively stigmatizing parent as child abuser and unfit parent, was enacted for punitive purpose and had to be held unconstitutional as impermissible bill of attainder, where narrowness with which statute applied, only to this particular noncustodial parent and his daughter, belied any nonpunitive purpose to deal with

alleged child sexual abuse generally, and where fact that Congress would not have enacted this legislation if parent had agreed to voluntarily give up his visitation rights, showed that it was Congress' purpose in enacting law to assume role of judicial tribunal and to impose its own determination of who was or was not fit parent.

CASE NOTES

ANALYSIS

Moot questions.

Standing.

Validity.

Moot questions.

While noncustodial parent's challenge to constitutionality of District of Columbia legislation that interfered with his court-ordered right to visitation with his daughter, to extent that it was based upon reputational injury resulting from such interference, was rendered moot once daughter reached age of majority, separate reputational injury arising from existence of this legislation itself, which effectively branded parent as child abuser and unfit parent, was sufficient to confer Article III standing; judicial determination that Congress acted unlawfully in enacting this legislation would provide significant measure of redress for the harm that legislation had caused to parent's reputation. *Foretich v. United States*, 351 F.3d 1198, 2003 U.S. App. LEXIS 25375 (C.A.D.C. 2003).

Cause of action that noncustodial parent brought challenging, both as unlawful bill of attainder and on other grounds, legislation that prevented him from obtaining visitation with his daughter against her wishes, and in face of unproven allegations of sexual abuse, after she had turned thirteen, had become moot, insofar as injury of which parent complained was interference with visitation rights that he had previously enjoyed under judicial decree, after child had reached age of majority; once daughter reached age of majority, District of Columbia law precluded parent from obtaining or enforcing any visitation order, even in absence of challenged legislation. *Foretich v. United States*, 351 F.3d 1198, 2003 U.S. App. LEXIS 25375 (C.A.D.C. 2003).

Standing.

Reputational injury that noncustodial parent sustained as result of legislation's interference with his court-ordered right to visitation with his daughter was not sufficient to give him Article III standing to challenge this legislation as bill of attainder or on other grounds, once daughter turned eighteen and father lost right to compel visitation with daughter even in absence of any such legislation. *Foretich v.*

United States, 351 F.3d 1198, 2003 U.S. App. LEXIS 25375 (C.A.D.C. 2003).

Although legislation that prohibited District of Columbia court from "impos[ing] sanctions" on custodial parent for interfering with visitation rights of other parent accused of sexually abusing child did prevent other parent from seeking fresh award of sanctions for custodial parent's acts in fleeing with child to New Zealand, any injury in this respect was too speculative to give noncustodial parent Article III standing to challenge constitutionality of legislation, where noncustodial parent could point to no efforts on his part to obtain any such award; mere prospect that noncustodial parent might one day wish to press claim for costs associated with other parent's flight to New Zealand was too remote to impose any "actual or imminent" injury in fact. *Foretich v. United States*, 351 F.3d 1198, 2003 U.S. App. LEXIS 25375 (C.A.D.C. 2003).

Legislation that prohibited District of Columbia court from "impos[ing] sanctions" on custodial parent for interfering with visitation rights of other parent accused of sexually abusing child did not preclude other parent from seeking enforcement of sanctions which court, upon finding that allegations of sexual abuse were not sufficiently proven, had previously imposed, so that other parent could not demonstrate any cognizable injury in this respect, of kind sufficient to give him Article III standing to challenge constitutionality of legislation. *Foretich v. United States*, 351 F.3d 1198, 2003 U.S. App. LEXIS 25375 (C.A.D.C. 2003).

Validity.

Legislation that prohibited noncustodial parent from obtaining visitation with daughter against her wishes, and in face of unproven allegations of sexual abuse, after she had turned thirteen, thereby effectively stigmatizing parent as child abuser and unfit parent, was enacted for punitive purpose and had to be held unconstitutional as impermissible bill of attainder, where narrowness with which statute applied, only to this particular noncustodial parent and his daughter, belied any nonpunitive purpose to deal with alleged child sexual abuse generally, and where fact that Congress would not have enacted this legisla-

tion if parent had agreed to voluntarily give up his visitation rights, showed that it was Congress' purpose in enacting law to assume role of judicial tribunal and to impose its own determination of who was or was not fit parent. *Foretich v. United States*, 351 F.3d 1198, 2003 U.S. App. LEXIS 25375 (C.A.D.C. 2003).

Legislation that prohibited noncustodial parent from obtaining visitation with daughter against her wishes, and in face of unproven allegations of sexual abuse, after she had turned thirteen, "applied with specificity," as

required for legislation to be subject to attack as bill of attainder; though Congress stopped short of using noncustodial parent's name in text of statute, applicability of statute depended on such a narrow set of circumstances that noncustodial parent was easily identified as being the subject of legislation, and government conceded at oral argument that there was no genuine issue as to law's specificity. *Foretich v. United States*, 351 F.3d 1198, 2003 U.S. App. LEXIS 25375 (C.A.D.C. 2003).

Subchapter III. Miscellaneous Provisions.

§ 11-941. Issuance of warrants; record.

Subject to Title 23, judges of the Superior Court may, at any time, including Sundays and legal holidays, on complaint or application under oath or actual view, issue warrants for arrest, search or seizure, or electronic surveillance in connection with crimes and offenses committed within the District of Columbia, or for administrative inspections in connection with laws relating to the public health, safety, and welfare. Each proceeding respecting a warrant shall be recorded as prescribed by the court. Warrants shall be issued free of charge.

(July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-941. 1973 Ed., § 11-941.

§ 11-942. Subpenas [Subpoenas].

(a) The Superior Court may compel the attendance of witnesses by attachment. At the request of any party, subpoenas [subpoenas] for attendance at a hearing or trial in the Superior Court shall be issued by the clerk of court. A subpoena [subpoena] may be served at any place within the District of Columbia, or at any place without the District of Columbia that is within twenty-five miles of the place of the hearing or trial specified in the subpoena [subpoena]. The form, issuance, and manner of service of the subpoena [subpoena] shall be as prescribed by the rule of the court.

(b) A subpoena [subpoena] in a criminal case in which a felony is charged may be served at any place within the United States upon order of a judge of the court.

(July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-942. "subpoena" and "subpoenas" were inserted, in 1973 Ed., § 11-942.

Editor's notes. — Throughout the section,

"subpoena" and "subpoenas" were inserted, in brackets, to correct misspellings.

CASE NOTES

ANALYSIS

Grand juries.
In general.

Grand juries.

As regards statute providing that a "subpoena in a criminal case in which a felony is charged may be served at any place within the United States upon order of a judge of the court," the language "in which a felony is charged" was not meant by Congress to deprive superior court grand juries investigating felony cases of nationwide subpoena power; the language was intended only to differentiate between misdemeanor and felony cases. D.C. Code § 11-942(b). *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Superior court may issue a writ in the nature of a writ of habeas corpus ad testificandum where it is necessary that a prisoner be produced pursuant to a grand jury subpoena commanding him to appear in a lineup; however, issuance of the writ is discretionary, and the court must first satisfy itself that the writ is in "necessary" aid of the court's jurisdiction. 18 U.S.C. § 1651. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Prior to giving judicial approval to the issuance of grand jury subpoenas duces tecum for the production of financial records, a grand jury case must be formally opened, the grand jury records must reflect on whom subpoenas will be served, and the subpoenas must be returnable on a specified date before a sitting grand jury. *In re Investigation of Violation of D.C. Code* § 22-3811, 112 WLR 909 (Super. Ct.).

In general.

Where subpoena served on prospective wit-

ness in criminal case specified a February 11 appearance date, but prosecutor informed witness that she would be informed by telephone of the exact date and time her testimony would be required and in early March witness was notified to appear to testify on March 12 but witness failed to appear, the telephone standby procedure did not vitiate the continuing efficacy of the subpoena and witness's failure to appear was a criminal contempt of court and not merely a violation of prosecutor's direction to witness. D.C. Code §§ 11-942(b), 11-944; D.C. Code SCR, Criminal Rule 17(g). *In re Ragland*, 343 A.2d 558, 1975 D.C. App. LEXIS 235 (1975).

Prospective witness' subjective beliefs as to validity of subpoena directing her to appear in criminal case did not constitute a valid excuse or defense to charge of criminal contempt of court. D.C. Code §§ 11-942(b), 11-944; D.C. Code SCR, Criminal Rule 17(g). *In re Ragland*, 343 A.2d 558, 1975 D.C. App. LEXIS 235 (1975).

A subpoena, when duly served, creates a continuing obligation upon the person subpoenaed to comply with it until he is released by the court. D.C. Code §§ 11-942(b), 11-944; D.C. Code SCR, Criminal Rule 17(g). *In re Ragland*, 343 A.2d 558, 1975 D.C. App. LEXIS 235 (1975).

When arrangements are made between prosecutor and prospective witness to postpone the appearance date specified in subpoena and to continue the effectiveness of the subpoena to another time, it will be incumbent on prosecutor to establish beyond a reasonable doubt the precise terms of the arrangements made with the prospective witness and that the person subpoenaed understood them. D.C. Code §§ 11-942(b), 11-944; D.C. Code SCR, Criminal Rule 17(g). *In re Ragland*, 343 A.2d 558, 1975 D.C. App. LEXIS 235 (1975).

§ 11-943. Process.

(a) All process other than a subpoena [subpoena] may be served at any place within the District of Columbia, and, when authorized by statute or by the Federal Rules of Civil Procedure, at any place without the District of Columbia.

(b) Service upon a third-party defendant, upon a person whose joinder is needed for just adjudication, and upon persons required to respond to any order of commitment for civil contempt may be served at all places outside the District of Columbia that are not more than one hundred miles from the place of hearing or trial specified.

(c) The form, issuance, and manner of service of process shall be prescribed by rule of the court.

(July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-943.
1973 Ed., § 11-943.

Editor's notes. — In subsection (a) of this

section, “subpoena” was inserted, in brackets, to correct a misspelling.

CASE NOTES

Service of process.

Under District of Columbia law, plaintiffs’ proof of service on limited liability company (LLC) was ineffective, and thus LLC was not required to join notice of removal, where affidavit of proof of service failed to provide any indication that person who accepted service was proper individual to accept service for LLC. *Kopff v. World Research Group, LLC*, 298 F.Supp.2d 50, 2003 U.S. Dist. LEXIS 23641 (2003), dismissed in part by 2006 U.S. Dist. LEXIS 77018 (D.D.C. Oct. 24, 2006).

Under District of Columbia law, plaintiffs’ service of amended complaint by means of facsimile transmission was ineffective, and thus defendant was not required to join notice of removal, where defendant had not consented to electronic service, and there was no administrative order of Superior Court permitting such service. *Kopff v. World Research Group, LLC*, 298 F.Supp.2d 50, 2003 U.S. Dist. LEXIS 23641 (2003), dismissed in part by 2006 U.S. Dist. LEXIS 77018 (D.D.C. Oct. 24, 2006).

Default judgment was inappropriate in action brought by grandparent of developmentally disabled child against District of Columbia, alleging that child had been denied free appropriate public education, since default motion and service were procedurally defective; grandparent combined motions for entry of default and default judgment rather than first obtaining entry of default, and grandparent originally served attorney general of District of Columbia rather than mayor. *Peak v. District of Columbia*, 236 F.R.D. 13, 2006 U.S. Dist. LEXIS 30001 (2006).

Injured plaintiff’s failure to serve process on persons designated by mayor and corporation counsel as agents authorized to receive service of process warranted dismissal of suit against District of Columbia. *Eldridge v. District of Columbia*, 866 A.2d 786, 2004 D.C. App. LEXIS 703 (2004).

In determining whether plaintiff has shown good cause why action should not be dismissed for untimely service, a court considers reasons for plaintiff’s failure to comply with the rule, prejudice, if any, to plaintiff, prejudice, if any, to defendant, and whether plaintiff has made some showing of reasonable diligence in at-

tempting to comply with the rules. *Johnson v. Payless Shoe Source, Inc.*, 841 A.2d 1249, 2004 D.C. App. LEXIS 38 (2004).

Customer showed good cause that personal injury suit against shoe store owner should not have been dismissed for failure to timely file proof of service, requiring trial court to grant motion to reinstate, despite claim that owner did not timely receive notice of motion; customer’s reason for failing to file timely proof of service was that anthrax contamination produced numerous systemic delays in delivery of mail to courthouse, denial of customer’s motion would result in extreme prejudice by converting what ordinarily was a dismissal without prejudice into a dismissal with prejudice, corporation was not prejudiced as consequence of reinstatement, and customer demonstrated diligence in otherwise complying with rules of procedure. *Johnson v. Payless Shoe Source, Inc.*, 841 A.2d 1249, 2004 D.C. App. LEXIS 38 (2004).

Where defendant claimed to have first learned of action some time after service upon its agent duly authorized by appointment or by law, effective date of service of summons was date on which agent was served. *Johnson v. Payless Shoe Source, Inc.*, 841 A.2d 1249, 2004 D.C. App. LEXIS 38 (2004).

Just as actual notice of an action cannot cure ineffective service of process, neither may lack of actual notice forestall effective service of process. *Johnson v. Payless Shoe Source, Inc.*, 841 A.2d 1249, 2004 D.C. App. LEXIS 38 (2004).

Tenant was not entitled to relief from default judgment in favor of landlord in action for possession after selling the property; the tenant merely claimed to be out of town on date of hearing, had actual notice of the notice to vacate, received proper notice of the summons and complaint for possession through posting and mailing, and did not present an adequate defense, and the landlord and contract purchaser would suffer prejudice upon the setting aside of the default judgment. *Johnson v. Payless Shoe Source, Inc.*, 841 A.2d 1249, 2004 D.C. App. LEXIS 38 (2004).

Tenant was not entitled to vacating of default in favor of landlord in action for possession; the

tenant received the notice to vacate, did not file a verified answer, and failed to show good cause. *Johnson v. Payless Shoe Source, Inc.*, 841 A.2d 1249, 2004 D.C. App. LEXIS 38 (2004).

Previous owner's bare denial of receipt of the complaint or any other documents related to the case against him to confirm a tax deed and quiet title in real property, other than the final default judgment, was not sufficient to overcome the presumption of truth attached to the statement in the process server's return that he personally served the summons and complaint. *Venison v. Robinson*, 756 A.2d 906, 2000 D.C. App. LEXIS 171 (2000).

In order to overcome the presumption of truth attached to the statement in the process server's return, a movant seeking to set aside a default judgment on ground that he did not have notice of the proceedings is required to present strong and convincing evidence that he was not served. *Venison v. Robinson*, 756 A.2d 906, 2000 D.C. App. LEXIS 171 (2000).

Trial court was not required to conduct a hearing to determine the validity of the service of the summons and complaint on previous owner before entering default judgment, in action to confirm a tax deed and quiet title in real property, where previous owner merely denied receipt of the process without contesting the substance of the server's affidavit that stated previous owner was personally served. *Venison v. Robinson*, 756 A.2d 906, 2000 D.C. App. LEXIS 171 (2000).

Previous landowner's notice of appeal of entry of default judgment, in action to confirm a tax deed and quiet title in real property, di-

vested the trial court of its jurisdiction in all matters related to the case, including jurisdiction over an evidentiary hearing on the validity of the service of process, which it agreed to hold when it granted previous landowner's motion to reconsider. *Venison v. Robinson*, 756 A.2d 906, 2000 D.C. App. LEXIS 171 (2000).

Previous landowner's promptness in coming forward after a default judgment was entered against him, in action to confirm a tax deed and quiet title in real property, carried little or no weight, as factor considered on review of a denial of a motion to vacate a default judgment, where previous landowner presented no evidence, other than his unsupported claim that the judgment was the first document he received in the case, contesting the process server's affidavit that he was personally served, which allowed presumption that he received personal service. *Venison v. Robinson*, 756 A.2d 906, 2000 D.C. App. LEXIS 171 (2000).

Previous landowner's failure to overcome the presumption that he was personally served with summons and complaint that sought to confirm a tax deed and quiet title in real property, which arose from the statement of personal service in the process server's return, prevented a conclusion that he acted in good faith, as factor considered on review of a denial of a motion to vacate a default judgment. *Venison v. Robinson*, 756 A.2d 906, 2000 D.C. App. LEXIS 171 (2000).

Defendant who appeared in the small claims clerk's office and accepted service voluntarily submitted to the personal jurisdiction of Superior Court. *Robinson v. Roberts*, 122 WLR 521 (Super. Ct. 1994).

§ 11-944. Contempt power.

(a) Subject to the limitation described in subsection (b), and in addition to the powers conferred by section 402 of title 18, United States Code, the Superior Court, or a judge thereof, may punish for disobedience of an order or for contempt committed in the presence of the court.

(b)(1) In any proceeding for custody of a minor child conducted in the Family Division of the Superior Court under paragraph (1) or (4) of section 11-1101, no individual may be imprisoned for civil contempt for more than 12 months (except as provided in paragraph (2)), pursuant to the contempt power described in subsection (a), for disobedience of an order or for contempt committed in the presence of the court. This limitation does not apply to imprisonment for criminal contempt or for any other criminal violation.

(2) Notwithstanding the provisions of paragraph (1), an individual who is charged with criminal contempt pursuant to paragraph (3) may continue to be imprisoned for civil contempt until the completion of such individual's trial for criminal contempt, except that in no case may such an individual be imprisoned for more than 18 consecutive months for civil contempt pursuant to the contempt power described in subsection (a).

(3)(A) An individual imprisoned for 6 consecutive months for civil contempt for disobedience of an order in a proceeding described in paragraph (1) who continues to disobey such order may be prosecuted for criminal contempt for disobedience of such order at any time before the expiration of the 12-month period that begins on the first day of such individual's imprisonment, except that an individual so imprisoned as of the date of the enactment of this subsection may be prosecuted under this subsection at any time during the 90-day period that begins on the date of the enactment of this subsection.

(B) The trial of an individual prosecuted for criminal contempt pursuant to this paragraph —

(i) shall begin not later than 90 days after the date on which such individual is charged with criminal contempt;

(ii) shall, upon the request of the individual, be a trial by jury; and

(iii) may not be conducted before the judge who imprisoned the individual for disobedience of an order pursuant to subsection (a).

(July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111; Sept. 23, 1989, 103 Stat. 633, Pub. L. 101-97, § 2(a).)

Prior Codifications. — 1981 Ed., § 11-944.

1973 Ed., § 11-944.

CASE NOTES

ANALYSIS

Acts or conduct constituting contempt of court—In general.

—Disobedience of child support orders, acts or conduct constituting contempt of court.

—Disobedience to mandate, order, or judgment, acts or conduct constituting contempt of court.

—Failure of witness to appear, acts or conduct constituting contempt of court.

—Misconduct as officer of court, acts or conduct constituting contempt of court.

—Misconduct in presence of court, acts or conduct constituting contempt of court.

Double jeopardy.

Due process.

In general.

Proceedings.

—Costs, proceedings.

—In general.

—Instructions, proceedings.

—Judgment or order, proceedings.

—Jury trial, proceedings.

—Presumptions and burden of proof, proceedings.

—Weight and sufficiency of evidence, proceedings.

Review.

—In general.

—Moot appeals, review.

Sentencing or fine.

—In general.

—Remission or discharge from imprisonment, sentencing or fine.

Summary proceedings.

—Contempts in presence of court, summary proceedings.

—In general.

Acts or conduct constituting contempt of court—In general.

The decision to hold a party in civil contempt lies within the sound discretion of the trial court; however, a trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law. *Giles v. Crawford Edgewood Trenton Terrace*, 911 A.2d 1223, 2006 D.C. App. LEXIS 627 (2006).

The elements of criminal contempt, under the general criminal contempt statute, may be satisfied upon a showing of: (1) conduct committed in the presence of the court that disrupts the orderly administration of justice, or (2) willful disobedience of a court order, committed outside the presence of the court. *Baker v. United States*, 891 A.2d 208, 2006 D.C. App. LEXIS 16 (2006).

To be convicted of criminal contempt, a defendant must engage in either willful disobedience of a court order causing an obstruction of justice or contemptuous conduct committed in the presence of the court. *In re Dixon*, 853 A.2d 708, 2004 D.C. App. LEXIS 391 (2004).

To be convicted of criminal contempt, defendant must engage in either willful disobedience of court order causing an obstruction of justice, or contemptuous conduct committed in presence of court. D.C. Code 1981, § 11-944. *Brooks*

v. United States, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Upon holding a hearing and hearing argument of counsel, trial court could hold defendant in criminal contempt for making threatening gestures to prosecution's witness even though the gestures were made outside the court's presence. *Williams v. United States*, 551 A.2d 1353, 1989 D.C. App. LEXIS 6 (1989).

Trial court goes too far in seeking to insure compliance with its initial warning against asking of improper questions by threatening counsel with contempt citation. D.C. Code 1973, § 11-944; Criminal Rule 42(a). In re Gorfkle, 444 A.2d 934, 1982 D.C. App. LEXIS 331 (1982).

Order continuing criminal case for trial to a time certain was a very definite and direct order for defense counsel to appear at that time and was a proper basis for contempt adjudication against counsel when he failed to comply therewith. D.C. Code SCR, Civil Rule 104(c)(4); D.C. Code SCR, Criminal Rule 42(a, b). Appeal of Gregory, 387 A.2d 720, 1978 D.C. App. LEXIS 386 (1978).

Although it is mandatory that accused be present at beginning stage of trial, this does not mean that trial court is helpless when a defendant does not appear at beginning of trial as directed; proper exercise of court's contempt power, after appropriate factual inquiry, appears to be a prescribed method of punishing other defendant who fails to appear for trial and, in addition, one who willfully fails to appear as required is subject to prosecution. D.C. Code SCR, Criminal Rule 43; D.C. Code §§ 11-944, 23-1327, 23-1330; 18 U.S.C. § 402. *Campbell v. United States*, 295 A.2d 498, 1972 D.C. App. LEXIS 230 (1972).

— **Disobedience of child support orders, acts or conduct constituting contempt of court.**

Trial court had the authority to enter a civil contempt order against father due to his non-payment of child support, even though the parties' children had all reached the age of majority; the court had continuing jurisdiction to enforce a support order, and emancipation of the child did not dilute the court's authority to enforce arrearages incurred before emancipation. *Wagley v. Evans*, 971 A.2d 205, 2009 D.C. App. LEXIS 174 (2009).

Even in child support cases, the law generally disfavors imprisonment for debt. In re Estate of Bonham, 817 A.2d 192, 2003 D.C. App. LEXIS 78 (2003).

Although the court may hold a debtor in civil contempt to force compliance with a child support order, the trial court must predicate its application of such sanction on a finding that the defendant is able to pay the debt owed, considering all the circumstances of the case,

including whether the defendant's asserted inability to pay is due to involuntary financial straits or a voluntary decision to reduce his or her income. D.C. Code §§ 11-944, 15-320(c), 16-911, 16-912, 16-916. *Smith v. Smith*, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

"Ability to pay," for purposes of defense to a motion for contempt establishing noncompliance with a child support order based on inability to pay, is not merely a function of actual earnings but is to be derived, more broadly, from earning capacity in the current job market, given one's educational background and work experience. *Smith v. Smith*, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

A court may order a prison term for contempt of child support order but stay imprisonment on the condition of compliance with reasonable, specific requirements; if the contemnor violates these conditions, the court may revoke the stay. *Smith v. Smith*, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

— **Disobedience to mandate, order, or judgment, acts or conduct constituting contempt of court.**

When a defendant has been given no guidance about how to conduct himself in a situation where literal compliance with a stay-away order of a court is impossible, criminal contempt cannot be shown. *Payne v. United States*, 932 A.2d 1095, 2007 D.C. App. LEXIS 478 (2007).

Court of Appeals had jurisdiction over criminal contempt prosecution arising out of defendant's violating injunction relating to his holding himself out as a lawyer and engaging in the unauthorized practice of law; order was issued against defendant in the District of Columbia, defendant held himself out as authorized to practice law in the District, and defendant's disobedience of the prohibitions set out in the order had a direct influence upon the administration of justice. *Banks v. United States*, 926 A.2d 158, 2007 D.C. App. LEXIS 336 (2007), writ of certiorari denied by 554 U.S. 929, 128 S. Ct. 2984, 171 L. Ed. 2d 905, 2008 U.S. LEXIS 5118, 76 U.S.L.W. 3674 (2008).

Tenant was entitled to a hearing to show cause as to why landlord should not be held in contempt of court for allegedly failing to make repairs as promised under terms of the parties' consent order, even though tenant vacated her apartment and there was no longer a need to force compliance with the decree; in addition to compelling compliance, compensating the tenant was appropriate as a remedial objective of civil contempt. *Giles v. Crawford Edgewood Trenton Terrace*, 911 A.2d 1223, 2006 D.C. App. LEXIS 627 (2006).

Defendant's act of sending letters to complainant, after he acknowledged that he understood the trial court's order that he not have

direct or indirect contact with her while he was being held in preventive pretrial detention, constituted willful disobedience, as element of criminal contempt under general criminal contempt statute. *Baker v. United States*, 891 A.2d 208, 2006 D.C. App. LEXIS 16 (2006).

Even assuming that no-contact order, which trial court issued in connection with preventive pretrial detention of defendant, was invalid, defendant's failure to comply with the order constituted criminal contempt; defendant had neither objected to the order nor requested a stay or challenged the validity of the order in any way once it was issued, order was not reversed on appeal or modified after it was issued, and order, which essentially required defendant to refrain from engaging in further criminal activity, was not patently unauthorized. *Baker v. United States*, 891 A.2d 208, 2006 D.C. App. LEXIS 16 (2006).

Defendant was not prejudiced by trial court's failure to identify which one of his 18 violations of civil protection order (CPO) gave rise to single conviction for criminal contempt; defendant's actions did not collectively give rise to single charge of criminal contempt but, rather, separately constituted 18 independent violations. In re *Dixon*, 853 A.2d 708, 2004 D.C. App. LEXIS 391 (2004).

Since contempt statute permitted a judge of the Superior Court to punish for disobedience of a court order, and the judge who found defendant guilty of contempt was a judge of the Superior Court, not a magistrate judge, defendant was properly convicted of contempt based on his disobedience of judge's order requiring defendant, as a condition of pretrial release, to stay away from a specific block of city. *Vest v. United States*, 834 A.2d 908, 2003 D.C. App. LEXIS 633 (2003).

Contempt statute was a proper vehicle for prosecuting defendant for violation of the magistrate judge's stay away order, requiring defendant to stay away from a specific block of city as a condition of pretrial release, even though defendant might have been prosecuted as well under statute governing penalties for violation of conditions of release. *Vest v. United States*, 834 A.2d 908, 2003 D.C. App. LEXIS 633 (2003).

Lack of injury to trade name owner since it allegedly was commercially inactive and was not using the name was no defense to civil contempt against competitor for violating consent decree that prohibited competitor from conducting business in the District of Columbia in the owner's corporate name; the settlement agreement entitled the owner to competitor's profits without proof of actual injury if the competitor conducted business in the District of Columbia using owner's name. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

As a general proposition, civil contempt of a court order, including a consent decree, may be established only if the order allegedly violated is specific and definite or clear and unambiguous. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Courts are to construe ambiguities and omissions in consent decrees as redounding to the benefit of the person charged with contempt. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Trial judge in criminal prosecution had jurisdiction to issue civil contempt order to compel police officer to submit to urinalysis test based on her demeanor during her testimony as government witness, and thus, even if contempt order may have been erroneous given set of facts presented to judge, police officer was obligated to seek to stay order, for purpose of filing an expedited appeal, before she could disobey the order. Court of Appeals Rule 8; D.C. Code 1981, § 11-721. In re *Scott*, 517 A.2d 310, 1986 D.C. App. LEXIS 475 (1986).

If trial judge has jurisdiction over subject matter and parties before it, an individual has an obligation to comply with an order issued by the court or to seek to have order vacated. In re *Scott*, 517 A.2d 310, 1986 D.C. App. LEXIS 475 (1986).

Elements of offense of criminal contempt are willful disobedience of a court order causing obstruction of the orderly administration of justice. D.C. Code 1981, § 11-944. In re *Thompson*, 454 A.2d 1324, 1982 D.C. App. LEXIS 512 (1982).

Conduct of attorney was correctly adjudicated to be contemptuous where he refused to obey court's lucid rulings and heed its repeated admonitions with respect to scope of direct examination of client in the criminal case and scope of closing argument. D.C. Code 1981, § 11-944. In re *Thompson*, 454 A.2d 1324, 1982 D.C. App. LEXIS 512 (1982).

Nonpayment of fine imposed on attorney on originally finding him in contempt of court for failing to appear for scheduled court appearances was a sufficient basis for subsequent order finding attorney in contempt a second time for failing to pay that fine. In re *Evans*, 450 A.2d 443, 1982 D.C. App. LEXIS 426 (1982).

Two leading questions posed by defense counsel after trial court's warning against leading questions did not rise to level of patent disrespect for bench and could not fairly be said to have disrupted proceedings, and questions, while improper, did not amount to contempt. D.C. Code 1973, § 11-944; Criminal Rule 42(a). In re *Gorfkle*, 444 A.2d 934, 1982 D.C. App. LEXIS 331 (1982).

Absent pattern of multiple and manifest violations of order prohibiting leading of witness

on direct examination or circumstances showing clear contumacious intent, it would be unreasonable for trial court to conclude that any given failure to adhere to such order was necessarily intentional or reckless and contemptuous of court's authority. D.C. Code 1973, § 11-944; Criminal Rule 42(a). In re Gorfkle, 444 A.2d 934, 1982 D.C. App. LEXIS 331 (1982).

Generally, contempt may be adjudicated where there is a willful disobedience of a court order. D.C. Code § 11-944. In re Kirk, 413 A.2d 928, 1980 D.C. App. LEXIS 280 (1980).

As a general rule, violations of an order are punishable as criminal contempt even though order is set aside on appeal, and this is so even when order itself may be unconstitutional, but when order is without jurisdiction or power of issuing court, a refusal to obey it is not punishable by contempt. In re Evans, 411 A.2d 984, 1980 D.C. App. LEXIS 232 (1980).

Where question of trial court's power to fine attorney in criminal contempt proceedings in excess of \$300 without jury was novel and complicated one, attorney's decision to disregard trial court's order without benefit of stay was taken at his peril, and trial court's imposition of fine in excess of \$300 amount that District of Columbia Court of Appeals had determined on appeal to be lawful maximum amount was not so clearly outside trial court's powers as to justify attorney's refusal to comply with trial court's order. In re Evans, 411 A.2d 984, 1980 D.C. App. LEXIS 232 (1980).

Where criminal defendant refuses to heed admonitions of court, his conduct may be adjudicated to be contemptuous. *Irby v. United States*, 342 A.2d 33, 1975 D.C. App. LEXIS 414 (1975).

Trial judge did not abuse discretion in finding criminal defendant guilty of contempt, where, following exchange in which trial judge ordered codefendant to be quiet, defendant spoke out three times stating that he wanted to represent himself, trial judge then told him not to address court unless he was given permission, but defendant continued to answer court directly even after a further warning, and, when trial judge told him to stand up and asked him if he had heard warning, he finally admitted that he had heard the warning. D.C. Code SCR, Criminal Rule 42(a). *Irby v. United States*, 342 A.2d 33, 1975 D.C. App. LEXIS 414 (1975).

Where defendant, who had been given lineup order directing that he not alter his facial appearance prior to lineup and who had had at time of the order a full head of hair and a moustache and goatee, had his head and face shaved before preliminary hearing on the basis of alleged ringworm condition which had existed for several months, the defendant made no showing of exigent circumstances warranting failure to obtain court's permission and determination that he possessed the intent

required to support contempt conviction was justified. D.C. Code § 11-944. In re Jackson, 328 A.2d 377, 1974 D.C. App. LEXIS 315 (1974).

— Failure of witness to appear, acts or conduct constituting contempt of court.

Defendant was not entitled to rely on necessity defense with regard to charge of criminal contempt, stemming from his refusal to testify against individuals charged with murder, though defendant was frightened by murder of witness who had already testified, as defendant had refused reasonable, legal alternatives of accepting government protection or entering witness protection program, defendant had been given complete immunity for his testimony, except for perjury or false statements, and there was no evidence that defendant or his family had been subjected to any harm or threat of harm between subject murder and his trial for criminal contempt. D.C. Code 1981, § 11-944. *Budoo v. United States*, 677 A.2d 51, 1996 D.C. App. LEXIS 97 (1996).

Persons, who were found in contempt for failing to obey subpoenas, were not entitled to relief on basis of fact that the stated hour for appearance by such persons had passed when they were served with the subpoenas where the contempt involved failure to reappear after being served with such subpoenas which stated that there was a continuing obligation to remain in attendance until released. In re Kirk, 413 A.2d 928, 1980 D.C. App. LEXIS 280 (1980).

Deliberate or reckless disregard of a witness' obligation to appear can be punishable as contempt. D.C. Code § 11-944; D.C. Code SCR, Criminal Rule 17(g). In re Kirk, 413 A.2d 928, 1980 D.C. App. LEXIS 280 (1980).

In proceeding in which persons were found in contempt for failure to obey subpoenas to reappear as witnesses in criminal prosecution, evidence sufficiently supported findings that such persons knew that they had received a court paper and deliberately chose to disregard it and that they were without adequate excuse for failing to obey the subpoenas. D.C. Code §§ 11-944, 17-305; D.C. Code SCR, Criminal Rule 17(g). In re Kirk, 413 A.2d 928, 1980 D.C. App. LEXIS 280 (1980).

Where subpoena served on prospective witness in criminal case specified a February 11 appearance date, but prosecutor informed witness that she would be informed by telephone of the exact date and time her testimony would be required and in early March witness was notified to appear to testify on March 12 but witness failed to appear, the telephone standby procedure did not vitiate the continuing efficacy of the subpoena and witness's failure to appear was a criminal contempt of court and not

merely a violation of prosecutor's direction to witness. D.C. Code §§ 11-942(b), 11-944; D.C. Code SCR, Criminal Rule 17(g). In re Ragland, 343 A.2d 558, 1975 D.C. App. LEXIS 235 (1975).

Prospective witness' subjective beliefs as to validity of subpoena directing her to appear in criminal case did not constitute a valid excuse or defense to charge of criminal contempt of court. D.C. Code §§ 11-942(b), 11-944; D.C. Code SCR, Criminal Rule 17(g). In re Ragland, 343 A.2d 558, 1975 D.C. App. LEXIS 235 (1975).

— Misconduct as officer of court, acts or conduct constituting contempt of court.

Disbarment of attorney was warranted, in attorney disciplinary case, where attorney pled guilty to five counts of theft, two counts of fraud, and contempt of court in connection with attorney's conduct in swindling a series of landlords and prospective tenants, and attorney's offenses involved moral turpitude, thus warranting disbarment under statute. In re Hallmark, 998 A.2d 284, 2010 D.C. App. LEXIS 287 (2010).

Act of contemnee in choosing not to appear in court at time designated by court order and, instead, choosing to attend to other matters, arriving in court more than two hours late, was properly made a basis of summary contempt adjudication. D.C. Code SCR, Civil Rule 104(c)(4); D.C. Code SCR, Criminal Rule 42(a, b). Appeal of Gregory, 387 A.2d 720, 1978 D.C. App. LEXIS 386 (1978).

Contemnee had an obligation to personally inform judge of his conflicting obligations if he wished to avoid a contempt citation for failure to appear on time in court. D.C. Code SCR, Civil Rule 104(c)(4); D.C. Code SCR, Criminal Rule 42(a, b). Appeal of Gregory, 387 A.2d 720, 1978 D.C. App. LEXIS 386 (1978).

Obligation of contemnee to appear in court as required by court order was not met so as to avoid a contempt adjudication by his informing court clerks of his unavailability. D.C. Code SCR, Civil Rule 104(c)(4); D.C. Code SCR, Criminal Rule 42(a, b). Appeal of Gregory, 387 A.2d 720, 1978 D.C. App. LEXIS 386 (1978).

Any lawyer thinking that he can take a chance that a judge may not be available at hour designated for trial does so at his peril and, if he is tardy or fails to appear, he is liable for contempt without regard to trial judge's availability. D.C. Code SCR, Civil Rule 104(c)(4); D.C. Code SCR, Criminal Rule 42(a, b). Appeal of Gregory, 387 A.2d 720, 1978 D.C. App. LEXIS 386 (1978).

Willful failure of counsel to appear in court on time is breach of professional duty, and often causes disruption of judicial process; while breach of this professional duty is punishable

by criminal contempt, such adjudication must be based on finding, adequately supported by evidence of record, that failure to appear on time was result of willful, deliberate or reckless disregard of professional obligations. In re Denney, 377 A.2d 1360, 1977 D.C. App. LEXIS 390 (1977).

In contempt proceeding, trial court properly inferred from attorney's refusal to return to courtroom after receiving specific court order to do so that attorney's conduct was willful and contemptuous. In re Schaeffer, 370 A.2d 1362, 1977 D.C. App. LEXIS 437 (1977).

Where trial court found that counsel had deliberately disregarded explicit court order resulting directly in delay of ongoing trial, trial court in its discretion could find counsel guilty of contempt and impose sanction against counsel immediately after contemptuous conduct had ceased. D.C. Code SCR, Criminal Rule 42(a). In re Hunt, 367 A.2d 155, 1976 D.C. App. LEXIS 439 (1976), writ of certiorari denied by 434 U.S. 817, 98 S. Ct. 54, 54 L. Ed. 2d 72, 1977 U.S. LEXIS 2769 (1977).

Where counsel failed to appear at trial at designated time because of conflict brought about by scheduling of preliminary hearing at same time as trial, but counsel failed to contact trial court and advise it of the conflict, it was within trial court's discretion to treat counsel's tardiness as an act of contempt. D.C. Code SCR, Civil Rule 104(b)(3), (c)(3); D.C. Code SCR, Criminal Rule 42(a). In re Hunt, 367 A.2d 155, 1976 D.C. App. LEXIS 439 (1976), writ of certiorari denied by 434 U.S. 817, 98 S. Ct. 54, 54 L. Ed. 2d 72, 1977 U.S. LEXIS 2769 (1977).

Conduct of defense counsel, against whom a summary conviction of contempt was issued during criminal trial, exceeded permissible bounds where his persistent defiance of trial court's authority resulted in his forceful removal from courtroom and the grant of a mistrial. D.C. Code SCR, Criminal Rule 42(a). In re Nesbitt, 345 A.2d 154, 1975 D.C. App. LEXIS 251 (1975).

Gross callousness, gross negligence, or gross indifference of member of bar may under some circumstances constitute breach of professional duty and warrant an adjudication of contempt. D.C. Code SCR, Criminal Rule 42(a). In re Brown, 320 A.2d 92, 1974 D.C. App. LEXIS 216 (1974).

Where trial counsel makes commitment to trial court to return directly for trial following hearing in another court, counsel should seek any further extension for attending to other business from the trial court, and may be properly held in contempt upon failure to appear, despite notification to clerk. In re Rosen, 315 A.2d 151, 1974 D.C. App. LEXIS 367 (1974), writ of certiorari denied by 419 U.S. 964, 95 S. Ct. 224, 42 L. Ed. 2d 178, 1974 U.S. LEXIS 3058 (1974).

Defense counsel's violation of court order, which clearly limited scope of counsel's cross-examination of police officer and directed counsel to refrain from questioning officer about complaints against him filed by defendant, lacked the intent necessary to be contemptuous of the court, where counsel claimed confusion regarding extent of order, and he later received permission from court to explore issue of officer's bias against defendant. *In re Richard Samad*, 135 WLR 633 (Super. Ct. 2007).

— Misconduct in presence of court, acts or conduct constituting contempt of court.

Trial court's finding that defendant was in contempt of court based upon his statement to trial court that "the day will come for your judgment" could not be sustained by record, where defendant's comment was not disruptive of proceedings, was only one isolated comment, meaning of which was ambiguous, and where trial court failed to recite facts which might have demonstrated that comment was threatening or sinister. *Warrick v. United States*, 528 A.2d 438, 1987 D.C. App. LEXIS 385 (1987).

Trial court's disciplinary powers should be used sparingly with allowance made for passion and inflamed emotion which may surface during course of trial. *In re Nesbitt*, 345 A.2d 154, 1975 D.C. App. LEXIS 251 (1975).

Tardiness or non-appearance may be punished as contempt committed in presence of court. D.C. Code SCR, Criminal Rule 42(a). *In re Brown*, 320 A.2d 92, 1974 D.C. App. LEXIS 216 (1974).

Double jeopardy.

Double jeopardy principles are implicated by criminal contempt convictions resulting from nonsummary proceedings and such a conviction bars a subsequent criminal prosecution if both cases involve the same offense. *United States v. Dixon*, 117 WLR 9 (Super. Ct. 1989).

One who has been convicted of criminal contempt for violating a court order that he not commit any criminal offense while on pretrial release may not be subsequently prosecuted for commission of the substantive offense which formed the basis of the contempt conviction. *United States v. Dixon*, 117 WLR 9 (Super. Ct. 1989).

Due process.

Filing of indictment for criminal contempt for violation of no-contact order satisfied requirements, in Supreme Court's criminal rule, that criminal contempt must be prosecuted on notice to defendant, which must include the time and place of hearing and must state the essential facts constituting the criminal contempt charge. *Baker v. United States*, 891 A.2d 208, 2006 D.C. App. LEXIS 16 (2006).

Defendant's due process rights were violated by summary criminal contempt proceeding in which defendant was not informed of nature of proceeding against him, defendant was not permitted to speak on his own behalf, and trial judge did not explore alternatives to summarily holding defendant in contempt; defendant allegedly pointed at trial judge after sentencing of defendant's friend. Criminal Rule 42(a); U.S. Const. Amends. 5, 14. *McCormick v. United States*, 635 A.2d 347, 1993 D.C. App. LEXIS 316 (1993).

Where, after 23 months in prison, there was no realistic possibility that civil contemnor would comply with court order, continued incarceration could no longer be said to have coercive effect and due process required her release from jail. U.S. Const. Amend. 5. *Morgan v. Foretich*, 564 A.2d 1, 1989 D.C. App. LEXIS 159 (1989).

In general.

"Criminal contempt" consists of a contemptuous act accompanied by a wrongful state of mind, both of which must be proved beyond a reasonable doubt, whereas "civil contempt" is more remedial in nature and requires no finding of intent. *In re Dixon*, 853 A.2d 708, 2004 D.C. App. LEXIS 391 (2004).

Unlike criminal contempt, which is designed to punish the contemnor and to vindicate the court, civil contempt serves one of two purposes, either to enforce compliance with a court order or to compensate for losses sustained by reason of a party's non-compliance. *In re T.S.*, 829 A.2d 937, 2003 D.C. App. LEXIS 490 (2003).

Ability of trial judges to hold individuals in contempt of court is well-established and fundamental to orderly system of justice; power to punish for contempt is inherent in nature and constitution of a court, and does not derive from statute, but arises from need to enforce compliance with administration of law. *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Criminal sanctions are extreme measures to which a trial judge should resort only after considering civil contempt. *In re Neal*, 475 A.2d 390, 1984 D.C. App. LEXIS 377 (1984).

Judge in determining whether to enter adjudication of criminal contempt must make a balanced value judgment case-by-case. *In re Thompson*, 454 A.2d 1324, 1982 D.C. App. LEXIS 512 (1982).

Offense of "criminal contempt" consists of contemptuous act and wrongful state of mind, and each element must be proved beyond a reasonable doubt, while, on other hand, judgment of "civil contempt" is remedial in nature and does not require finding of intent. D.C. Code 1973, § 11-944; Criminal Rule 42(a). *In re*

Gorfkle, 444 A.2d 934, 1982 D.C. App. LEXIS 331 (1982).

"Civil" as distinguished from "criminal contempt" is sanction to enforce compliance with order of court or to compensate for losses or damages sustained by reason of noncompliance, and may be imposed for prohibited acts irrespective of intent. *Bolden v. Bolden*, 376 A.2d 430, 1977 D.C. App. LEXIS 351 (1977).

Contempt conviction should not be based on mere technicality, but should be imposed only where necessary to maintain orderly system of justice. D.C. Code SCR, Criminal Rule 42(a). In *re Hunt*, 367 A.2d 155, 1976 D.C. App. LEXIS 439 (1976), writ of certiorari denied by 434 U.S. 817, 98 S. Ct. 54, 54 L. Ed. 2d 72, 1977 U.S. LEXIS 2769 (1977).

Proceedings.

— Costs, proceedings.

The trial court had the discretion to award attorney fees reasonably incurred by trade name owner to prosecute competitor for civil contempt of consent decree even absent a finding that competitor's violation of court order was willful and even absent a specific attorney's fee provision in the decree. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

The lodestar approach to attorney fees is appropriate in civil contempt proceedings. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

No reversal or remand was required by the trial court's failure to articulate its reasoning further in awarding attorney fees of \$140,000 to trade name owner in proceeding to hold competitor in contempt for violating consent decree; no claim was made that the hours worked were unreasonable or unrelated to the contempt proceeding or that the attorneys' billing rates were unreasonably high, the independent special masters evaluated the legal expenses and found them to be reasonable overall, and this primarily factual finding was not shown to be clearly erroneous. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Trade name owner's failure to succeed completely in its claims against competitor for violating consent decree and to win every legal ruling concerning laches defense and scope of decree did not require reduction in attorney fee award; the case was an exceptionally complex one that mandated an extensive investigation of the competitor's entire course of business conduct over many years in order to establish that noncompliance with the consent decree was truly contemptuous, the full scope of the noncompliance needed to be explored and defined, and the owner prevailed on the main point. *Fed. Mktg. Co. v. Va. Impression Prods.*

Co., 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

A court has discretion to order a civil contemnor to pay prejudgment interest when such an award is necessary to compensate fully the party aggrieved; civil contempt sanctions serve a remedial purpose, and no explicit statutory authorization is required for an award of prejudgment interest. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Competitor's contempt by violating consent decree that prohibited competitor from conducting business in the District of Columbia in the trade name owner's name did not entitle owner to prejudgment interest; the decree specified the remedy for its violation and omitted any provision for such interest even though the parties recognized that an accounting for improper profits could cover a period of several years, the trial court could view an award without interest as sufficient, especially since the owner did not show that it would have earned any more profits itself if the competitor had complied with its obligations, and the owner was dilatory in seeking to enforce its rights under the decree. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

— In general.

Civil contempt is not a crime, and a civil contempt proceeding remains a part of the original cause. In *re T.S.*, 829 A.2d 937, 2003 D.C. App. LEXIS 490 (2003).

Trial court conducted an unlawful investigation into whether Department of Human Services failed to feed minor, while minor was in Department's custody, after minor brought civil contempt motion against Department; court could not conduct investigation into motion that was pending before it. In *re T.S.*, 829 A.2d 937, 2003 D.C. App. LEXIS 490 (2003).

Criminal contempt proceedings may be prosecuted by private attorneys appointed by the court for that purpose. In *re Peak*, 759 A.2d 612, 2000 D.C. App. LEXIS 230 (2000).

When a private attorney is appointed solely for contempt prosecution, that attorney is appointed to pursue the public interest in vindication of the court's authority; thus, for purposes of the contempt proceeding, the attorney so appointed represents the sovereign. In *re Peak*, 759 A.2d 612, 2000 D.C. App. LEXIS 230 (2000).

Private attorney appointed to prosecute criminal contempt action had authority to execute, on behalf of the government, conditional plea agreement. In *re Peak*, 759 A.2d 612, 2000 D.C. App. LEXIS 230 (2000).

Nonsummary criminal contempt proceedings are designed to address either conduct occurring outside presence of court, or conduct in

presence of court where either no exigency exists or where court lacks information sufficient to adjudicate alleged contempt; rule governing such proceedings requires notice of offense charged, which provides opportunity to prepare and present defense, and while rule does not explicitly so provide, proceedings require assistance of counsel and opportunity to allocute at sentencing. Criminal Rule 42(b). *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Defendant was denied constitutional right to testify in his own behalf under oath in proceeding to hold him in criminal contempt for violation of condition of pretrial release that he refrain from illegal drug use when trial court refused to permit defendant to describe his alleged presence in room when others were smoking crack cocaine to lay putative foundation for passive inhalation defense and to permit court to judge his demeanor. Criminal Rule 42(b); D.C. Code 1981, § 23-1329(c); U.S. Const. Amends. 5, 14. *Beckham v. United States*, 609 A.2d 1122, 1992 D.C. App. LEXIS 146 (1992).

Constitution confers upon defendants in criminal contempt proceedings unqualified right to testify in their behalf, subject to normal rules of relevance and procedure. Criminal Rule 42(b); U.S. Const. Amends. 5, 14. *Beckham v. United States*, 609 A.2d 1122, 1992 D.C. App. LEXIS 146 (1992).

Criminal contempt proceeding is not criminal prosecution, and consequently not all procedures required in criminal trial are necessary in hearing on charge of contempt. *Beckham v. United States*, 609 A.2d 1122, 1992 D.C. App. LEXIS 146 (1992).

By pleading guilty to charge of criminal contempt, defendant agreed to subject himself to potential punishment under statute eliminating limit on nature or amount of potential penalty which can be imposed by Superior Court for criminal contempt. D.C. Code 1981, § 11-944. *Caldwell v. United States*, 595 A.2d 961, 1991 D.C. App. LEXIS 184 (1991).

— Instructions, proceedings.

Trial court acted within its discretion at trial for criminal contempt when it rejected defendant's proposed jury instruction on contempt and, instead, gave standard instruction on contempt; standard instruction incorporated proposed instruction to effect that defendant did not engage in a "willful show of disrespect to the court" and did not have "a wrongful state of mind," and trial court allowed defendant to argue proposed instruction as a theory during closing argument. *Payne v. United States*, 932 A.2d 1095, 2007 D.C. App. LEXIS 478 (2007).

— Judgment or order, proceedings.

Assuming that no-contact order, which trial court issued orally in connection with preven-

tive pretrial detention of defendant, was valid, the order did not lack specificity, as would preclude defendant from being convicted of criminal contempt for violating the order; defendant responded "yes" when asked by trial court if he understood the trial court's order to "stay completely away" from the complainant while the case was pending and to have "no contact whatsoever directly or indirectly" with complainant, and there was nothing unusual or ambiguous about such prohibition. *Baker v. United States*, 891 A.2d 208, 2006 D.C. App. LEXIS 16 (2006).

When the underlying controversy giving rise to a civil contempt action is settled or is otherwise terminated, the contempt proceeding becomes moot insofar as it seeks to compel enforcement of a court order. *In re T.S.*, 829 A.2d 937, 2003 D.C. App. LEXIS 490 (2003).

In summary contempt proceeding, trial judge must set forth with particularity, in written certification, grounds for contempt finding. Juvenile Rule 42(a); Criminal Rule 42(a); D.C. Code 1981, § 11-944. *In re L.G.*, 639 A.2d 603, 1994 D.C. App. LEXIS 42 (1994).

Criminal contempt order satisfied procedural requirements of rule where written order was signed by judge, entered of record, and recapitulated the facts in a manner sufficient to inform the Court of Appeals what conduct constituted the contempt. Criminal Rule 42(a). *In re Thompson*, 454 A.2d 1324, 1982 D.C. App. LEXIS 512 (1982).

Order which set forth factual basis of contempt and which was entered by court when it denied contemnee's motion to set aside contempt adjudication was sufficient to satisfy requirements of rule where it was written, signed by trial judge, entered of record, and recited facts in a manner sufficient to inform reviewing court what conduct constituted contempt. D.C. Code SCR, Civil Rule 104(c)(4); D.C. Code SCR, Criminal Rule 42(a, b). *Appeal of Gregory*, 387 A.2d 720, 1978 D.C. App. LEXIS 386 (1978).

Order of contempt disclosing that trial court had ordered all participants in trial to be in court promptly at 10 a. m., that counsel did not appear until nearly ten minutes later, and that counsel failed to explain his action to satisfaction of court specified in sufficient detail the facts upon which contempt order was predicated. D.C. Code SCR, Criminal Rule 42(a). *In re Hunt*, 367 A.2d 155, 1976 D.C. App. LEXIS 439 (1976), writ of certiorari denied by 434 U.S. 817, 98 S. Ct. 54, 54 L. Ed. 2d 72, 1977 U.S. LEXIS 2769 (1977).

— Jury trial, proceedings.

Had trial court imposed criminal contempt sanctions exceeding six months imprisonment or fine greater than \$300, defendant could have requested jury to be fact finder. D.C. Code 1981,

§ 11-944. *Williams v. United States*, 551 A.2d 1353, 1989 D.C. App. LEXIS 6 (1989).

A guarantee to trial by jury applies to a contempt case in which the sentence may exceed six months. D.C. Code 1981, §§ 11-944, 16-705(a); Criminal Rule 23(a); U.S.C. Const.Amend. 6. In *re Tinney*, 518 A.2d 1009, 1986 D.C. App. LEXIS 490 (1986).

Right to a jury trial on charge of contempt of court for refusing to testify in criminal matter was voluntarily and intentionally waived when defendant, who was well aware from terms of contempt order that he was entitled to a trial by jury, failed to indicate to government or to court that he desired a jury trial and, in addition, submitted to court on record at show cause hearing. D.C. Code 1981, §§ 11-944, 16-705(a); Criminal Rule 23(a); U.S.C. Const.Amend. 6. In *re Tinney*, 518 A.2d 1009, 1986 D.C. App. LEXIS 490 (1986).

Appropriate standard for determining seriousness of contempts committed in District of Columbia local courts was to be found in certain statute concerning trial by jury, and thus fact that attorney, who was fined \$500 in first proceeding for criminal contempt arising from failure to appear in three court-appointed cases, and who was fined \$400 in second proceeding for failure to pay \$500 fine, was fined in both convictions in excess of \$300, the standard contained in certain statute, meant that he was convicted of serious offenses and entitled to jury trial in both instances, as guaranteed by Sixth Amendment and by another statute. D.C. Code § 16-705(a, b); U.S. Const. Amend. 6. In *re Evans*, 411 A.2d 984, 1980 D.C. App. LEXIS 232 (1980).

A petty contempt, that is, one for which the penalty imposed either does not exceed six months, or a longer penalty has not been expressly authorized by statute, may be tried without a jury. D.C. Code § 11-944. In *re Carter*, 373 A.2d 907, 1977 D.C. App. LEXIS 323 (1977).

— Presumptions and burden of proof, proceedings.

To prove criminal contempt of court, the government must prove (1) conduct committed in the presence of the court that disrupts the orderly administration of justice or (2) willful disobedience of a court order, committed outside the presence of the court; willful disobedience is found when one intentionally violates a court order. *Payne v. United States*, 932 A.2d 1095, 2007 D.C. App. LEXIS 478 (2007).

When faced with a motion for contempt establishing noncompliance with a court order, the defendant bears the burden of showing an inability to pay or some other excuse for failure to comply. *Smith v. Smith*, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

General rule with respect to civil contempt is that where noncompliance with judicial order has been factually established, burden of establishing justification for noncompliance shifts to alleged contemnor. *Bolden v. Bolden*, 376 A.2d 430, 1977 D.C. App. LEXIS 351 (1977).

Where civil contempt order imposed fine rather than imprisonment and was not for failure to pay debts but for failure to do specific acts to facilitate sale of real estate, case was governed by general rule, not exception, and, once noncompliance with decree was established, burden of establishing justification for noncompliance shifted to alleged contemnor. D.C. Code § 16-901 et seq. *Bolden v. Bolden*, 376 A.2d 430, 1977 D.C. App. LEXIS 351 (1977).

— Weight and sufficiency of evidence, proceedings.

Evidence was sufficient to show that defendant willfully violated trial court's order for him to stay at least 100 yards away from victim, so as to support conviction for criminal contempt, even though defendant argued that he did not attempt to cause harm to victim; defendant admitted that he saw victim, yet approached anyway, to speak with his friends. *Payne v. United States*, 932 A.2d 1095, 2007 D.C. App. LEXIS 478 (2007).

A trial court has the authority to reduce a series of contemptuous actions to a single instance of criminal contempt, so long as each episode is supported by substantial evidence. In *re Dixon*, 853 A.2d 708, 2004 D.C. App. LEXIS 391 (2004).

Evidence showed that defendant understood implications of civil protection order (CPO), so as to support conviction for criminal contempt for violating CPO by contacting complainant by telephone; defendant was handed copy of CPO by clerk in open court, CPO specifically and plainly prohibited contact with complainant, and there was no indication that defendant had any difficulty understanding what CPO said. In *re Dixon*, 853 A.2d 708, 2004 D.C. App. LEXIS 391 (2004).

Defendant's contempt conviction for failure to pay \$100 fine and \$50 in court costs, which were imposed as part of defendant's sentence for second-degree theft, was lawful and constitutional, where defendant's failure to pay fine and costs was wilful, as defendant made no attempt to give court any notice that he was having difficulty in finding employment, nor did he make any effort to pay any part of the fine, which could have been paid in installments if he had asked the court for permission to do so. *Bell v. United States*, 806 A.2d 228, 2002 D.C. App. LEXIS 512 (2002).

In order to convict for contempt, trial court must conclude, beyond a reasonable doubt, that alleged contemnor committed contumacious act

with wrongful state of mind. *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Evidence was insufficient to support conviction for contempt of individual who, after twice being warned by court during rent dispute proceeding about his conduct, made profane comment about condition of apartment within hearing of judge after proceeding was completed; individual did not violate order of court, as court had previously warned him only to calm down and be courteous, and court in its certification did not make finding of fact regarding required element of willfulness or finding that individual intended to direct any of his contumacious comments to court or with one exception even to opposing party. D.C. Code 1981, § 11-944. *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Trial court's written finding in contempt order that individual had engaged in threatening hand motions during rent dispute proceeding lacked evidentiary support, and could not be relied on to support individual's conviction for contempt; court did not state how gestures had threatened attorney for opposing party or what gestures appeared to convey. D.C. Code 1981, § 11-944. *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Trial judge's summary contempt citation against juvenile, based on three separate grounds arising from juvenile's use of profanity as witness during criminal trial, could not be supported with evidentiary support for only one ground, where judge considered three incidents together to constitute single count of contempt. Juvenile Rule 42(a); D.C. Code 1981, § 11-944. In re L.G., 639 A.2d 603, 1994 D.C. App. LEXIS 42 (1994).

Where summary criminal contempt order against attorney was based on repeatedly interrupting judge, refusing to provide "the necessary information" to court in connection with attorney's withdrawal from representation of criminal client, and attorney's reference to that request as "absurd," contempt conviction was required to be reversed where insufficient evidence supported finding that attorney refused judge's request to provide "the necessary information"; court stated in written ruling that attorney had refused to provide "the necessary information, including her fee arrangement," when attorney had actually agreed to request to provide fee arrangement, and, before holding attorney in contempt, court did not ask her for type of financial statement he eventually said would be appropriate. Criminal Rule 42(a). In re Kraut, 580 A.2d 1305, 1990 D.C. App. LEXIS 252 (1990).

Evidence was insufficient to sustain trial court's findings in summarily punishing defense counsel for contempt that reason for defense counsel's leading questions in criminal

trial stemmed from her desire to limit scope of government's cross-examination and that accordingly her "persistent failure to adhere to the court's rulings against leading questions constituted a willful and deliberate refusal to comply with the orders of the court." D.C. Code 1973, § 11-944; Criminal Rule 42(a). In re Gorfkle, 444 A.2d 934, 1982 D.C. App. LEXIS 331 (1982).

Record failed to sustain arraignment judge's finding of willfulness on occasion when he held attorney in criminal contempt because of attorney's failure to make timely appearance at arraignment for which he had been appointed counsel for accused; rather, record showed that attorney had become caught in scheduling conflict between two judges, and had properly chosen to complete appearance before other judge before appearing for client's arraignment. D.C. Code SCR, Civil Rules 104, 104(b); D.C. Code SCR, Criminal Rule 57. In re Denney, 377 A.2d 1360, 1977 D.C. App. LEXIS 390 (1977).

In a criminal contempt case, guilt must be established beyond a reasonable doubt. D.C. Code § 11-944. In re Carter, 373 A.2d 907, 1977 D.C. App. LEXIS 323 (1977).

Defendant's guilt of criminal contempt for violating a lineup order was established beyond a reasonable doubt, where the lineup order had specified that defendant was not to change his facial or bodily appearance prior to the lineup, but where defendant later appeared at the lineup with a shaven head. D.C. Code §§ 11-944, 17-305. In re Carter, 373 A.2d 907, 1977 D.C. App. LEXIS 323 (1977).

In order to convict an individual for criminal contempt, it is necessary to find beyond a reasonable doubt that the individual committed a volitional act that constitutes contempt; accordingly, in the instant case, a conviction of contempt could not be predicated solely on defendant's being arrested on probable cause, since the volitional act would be commission of a crime, not the matter of being arrested. D.C. Code §§ 11-944, 23-1321. In re Carter, 373 A.2d 907, 1977 D.C. App. LEXIS 323 (1977).

Evidence supported findings that defense counsel, who was summarily convicted for contempt during criminal trial, repeatedly and willfully refused to obey directions of court to be seated, persistently and contumaciously refused to respond to direct and simple question put to him by court and, in a voice clearly audible to jury, flagrantly defied authority of court by refusing to leave the bench and take his seat. D.C. Code SCR, Criminal Rule 42(a). In re Nesbitt, 345 A.2d 154, 1975 D.C. App. LEXIS 251 (1975).

Review.

— In general.

Unappealed contempt citation in Superior Court of District of Columbia was *res judicata*

and thus federal district court, in action challenging as violation of First Amendment rights requirement that plaintiffs rise upon judges' entering or exiting courtroom, should fashion declaratory relief so that it would be wholly prospective in nature and in no way designed to annul the results of the Superior Court trial. U.S. Const. Amend. 1. *Kaplan v. Hess*, 694 F.2d 847, 1982 U.S. App. LEXIS 23725 (C.A.D.C. 1982).

Only when trial court finds that a defendant's actions cumulatively, but not individually, rose to level of contempt will it be appropriate for appellate court to reverse a contempt conviction. In re *Dixon*, 853 A.2d 708, 2004 D.C. App. LEXIS 391 (2004).

Any error in trial court's admission of complainant's testimony that she told defendant during telephone calls that he was violating civil protection order (CPO) was harmless, in criminal contempt hearing, given sufficient other evidence of defendant's knowledge of CPO and his willful violation of it. In re *Dixon*, 853 A.2d 708, 2004 D.C. App. LEXIS 391 (2004).

Decision whether to hold a party in civil contempt is confided to the sound discretion of the trial judge, and will be reversed on appeal only upon a clear showing of abuse of discretion. In re *T.S.*, 829 A.2d 937, 2003 D.C. App. LEXIS 490 (2003).

Minor's civil contempt motion against Department of Human Services, based on Department's alleged failure to feed minor while in Department's custody, lost any relevance when underlying person in need of supervision (PINS) case against minor was dismissed on same day contempt motion was filed, and thus trial court committed harmless error when it denied motion after conducting an unlawful investigation into motion; minor was not prejudiced, as motion was subjected to dismissal regardless of improper investigation. In re *T.S.*, 829 A.2d 937, 2003 D.C. App. LEXIS 490 (2003).

Laches is not, strictly speaking, a defense in a civil contempt proceeding, but the decision whether to hold a party in civil contempt is confided to the sound discretion of the trial judge and will be reversed on appeal only upon a clear showing of abuse of discretion. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Defendant failed to preserve for appellate review his claim that \$100 fine was an impermissible additional penalty for his original crime of theft, in prosecution for contempt for failure to pay \$100 fine and \$50 in court costs, where defendant failed to raise issue at contempt hearing. *Bell v. United States*, 806 A.2d 228, 2002 D.C. App. LEXIS 512 (2002).

Summary criminal contempt proceedings in which trial judge was at once prosecutor, fact

finder, and sole witness require appellate court to undertake de novo review. Criminal Rule 42(a). *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Where judge witnessed disputed event giving rise to criminal contempt proceeding, appellate court's review is different from cases where trial court finds facts based upon evidence presented, and court has heightened obligation to independently evaluate contemnor's conduct. *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Appellate inquiry into whether evidence was sufficient to sustain conviction for criminal contempt entails questions of fact and questions of law, and trial court's findings of fact will not be disturbed unless shown to be without evidentiary support or plainly wrong, while question whether those acts constitute crime of contempt is question of law that court independently reviews; plenary review allows court to consider on one hand whether trial court's account of defendant's conduct is supported by the record, and on the other hand, whether even if true facts as certified by trial court met elements of criminal contempt. *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Appellate court in considering sufficiency of evidence to support conviction for criminal contempt reviews contemptuous acts in light of surrounding circumstances, gleaned those circumstances from trial transcript, contemporaneous recording of proceedings, and trial court's contempt certification. Criminal Rule 42(a). *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Appellate court adopted neutral stance in determining sufficiency of evidence to support conviction for criminal contempt, and did not indulge view of evidence which favored conviction, where trial court had permitted no confrontation, defense, or allocution and contempt proceeding could scarcely be termed adversarial "trial" in the traditional sense. *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Appellate court in considering conviction for criminal contempt reviews trial court's certification to determine whether (1) record supports each finding of fact in certification, and (2) supported facts in certification are sufficient to constitute criminal contempt. Criminal Rule 42(a). *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Reviewing court may not uphold conviction of criminal contempt on grounds other than those cited by trial court in its contempt certification. *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Reviewing court will reverse conviction for criminal contempt if it finds that there is not adequate record support for any certified fact

which was part of aggregate of facts upon which trial judge based his or her contempt ruling, and this is so even where individual acts for which there was evidentiary support could have independently sustained contempt conviction, but trial court relied on the aggregate in citing individual for contempt. *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

On appeal from summary contempt adjudication, Court of Appeals examines evidence underlying reasons for contempt finding stated by trial judge in written certification to ascertain what conduct constituted contempt. Juvenile Rule 42(a); Criminal Rule 42(a); D.C. Code 1981, § 11-944. In re L.G., 639 A.2d 603, 1994 D.C. App. LEXIS 42 (1994).

On appeal from summary adjudication of juvenile in contempt of court for using profanity while appearing as witness for defense in criminal trial, Court of Appeals could not substitute its own judgment to find juvenile in contempt of trial court for reasons not clearly articulated by trial court. Juvenile Rule 42(a); D.C. Code 1981, § 11-944. In re L.G., 639 A.2d 603, 1994 D.C. App. LEXIS 42 (1994).

Trial court's erroneous refusal to allow defendant to testify in criminal contempt proceeding which was based upon alleged violation of condition of pretrial release that defendant refrain from illegal drug use was not harmless, although defendant had previously made unsworn statements to trial court denying illegal drug use in response to positive drug test results; unsworn statements consisted of defendant uttering 15 words in response to three questions by court which was not the equivalent of right to testify. Criminal Rule 42(b); D.C. Code 1981, § 23-1329(c); U.S. Const. Amends. 5, 14. *Beckham v. United States*, 609 A.2d 1122, 1992 D.C. App. LEXIS 146 (1992).

Time for noting appeal from summary criminal contempt began to run from date of written order, rather than from date of earlier oral contempt ruling. Criminal Rule 42(a). In re *Kraut*, 580 A.2d 1305, 1990 D.C. App. LEXIS 252 (1990).

Summary criminal contempt adjudication will not have final order, ready for compliance by defendants and ripe for appellate review, until trial court itself has fully honored all requirements of criminal rule pertaining to summary disposition of criminal contempt. Criminal Rule 42(a). In re *Kraut*, 580 A.2d 1305, 1990 D.C. App. LEXIS 252 (1990).

Proof by clear and convincing evidence that defendant failed to live up to his side of bargain requiring him to testify truthfully at retrial if he wished contempt charge dropped did not compromise defendant's right to require government to prove his guilt on contempt charge beyond a reasonable doubt when he did not so testify. D.C. Code 1981, §§ 11-944, 16-705(a);

Criminal Rule 23(a); U.S. Const. Amend. 6. In re *Tinney*, 518 A.2d 1009, 1986 D.C. App. LEXIS 490 (1986).

Contemnee had burden of demonstrating error from record on appeal from contempt adjudication and could not do so by arguing from an absent record. Appeal of *Gregory*, 387 A.2d 720, 1978 D.C. App. LEXIS 386 (1978).

Where no final order of trial court had been entered fixing total amount of fine to be paid for civil contempt, and no assets of contemnor had been sequestered, the contempt adjudication was not for such reasons nonappealable, but it would have been premature for Court of Appeals to consider extent of contemnor's ultimate pecuniary liability for civil contempt. *Bolden v. Bolden*, 376 A.2d 430, 1977 D.C. App. LEXIS 351 (1977).

Absent imposition of sanction, whether it be fine, probation or term in jail, citation imposed on assistant United States attorney for criminal contempt in and of itself was not final order and raised no justiciable issue for appeal. D.C. Code § 11-721. In re *Cys*, 362 A.2d 726, 1976 D.C. App. LEXIS 350 (1976).

The assistant United States attorney's appeal from citation of criminal contempt for his refusal to comply with court order directing him to produce written memorandum relating to so-called first offender treatment program for purposes of discovery in criminal action wherein defendant charged with unlawful entry claimed he had been excluded from said program in derogation of his rights to due process and equal protection of laws could not be considered in posture of direct appeal from discovery order defied by government since neither of real parties in interest to that order, the government or the defendant, were party to appeal and since there had been no ruling on defendant's motion to dismiss. D.C. Code SCR, Criminal Rule 42(a, b); U.S. Const. Amend. 8; D.C. Code §§ 11-721, 11-944; 18 U.S.C. § 402. In re *Cys*, 362 A.2d 726, 1976 D.C. App. LEXIS 350 (1976).

Conviction for contempt arising out of failure to comply with reasonable orders of trial court aimed at securing an orderly trial will rarely be overturned on appeal. In re *Nesbitt*, 345 A.2d 154, 1975 D.C. App. LEXIS 251 (1975).

— Moot appeals, review.

Payment of fine originally imposed on finding attorney in contempt of court for failing to appear for scheduled court appearances would not have operated to moot appeal from contempt order, given collateral legal consequences which might flow to attorney. In re *Evans*, 450 A.2d 443, 1982 D.C. App. LEXIS 426 (1982).

Appeal from order adjudging a spectator, who claimed to be a Quaker, in contempt for refusing to rise as directed when judge entered

courtroom would be dismissed under doctrine of mootness, and the Court of Appeals would not decide whether the order violated "free exercise" clause of First Amendment, where judgment entered on order had been fully executed, and spectator, by simple expedient of requesting a stay of operation of judgment pending appeal, could have obtained review by the Court of Appeals, and under no theory could it be seriously contended that any possibility of further penalties or legal disabilities survived execution of judgment of conviction. U.S. Const. Amend. 1; D.C. Code §§ 11-944, 14-305; D.C. Code SCR, Criminal Rules 38(a), 42(a); D.C. Code Court of Appeals Rules, rule 8. In re De Neuville, 286 A.2d 225, 1972 D.C. App. LEXIS 324 (1972).

Sentencing or fine.

— In general.

Under statute governing contempt power, there is no statutory limitation on length of sentence for criminal contempt. *Seals v. United States*, 844 A.2d 349, 2004 D.C. App. LEXIS 70 (2004).

Thirty-six month sentence imposed on defendant for criminal contempt for violation of stay away order did not violate principles of proportionality; judge had before him two instances in case itself where defendant had disobeyed authority of court, judge had before him lengthy record of defendant's arrests and some convictions for crimes committed in apparent unbroken succession, including several that by definition involved willful disregard of court orders, and thus, defendant's conduct portrayed compelling case of need for sizeable sentence to punish his pattern of disregarding such orders. *Seals v. United States*, 844 A.2d 349, 2004 D.C. App. LEXIS 70 (2004).

When the trial court finds a party in civil contempt, it has broad discretion to impose a temperate sanction in light of equitable considerations. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Contempt statute for violation of condition of release operates independently of and in addition to statute eliminating limitation on length of sentence for criminal contempt, thus the sentencing limit of six months' imprisonment and \$1,000 fine does not apply to convictions for violations of pretrial release order constituting contempt. D.C. Code 1981, §§ 11-944, 16-705(b), 23-1329(c); U.S. Const. Amends. 5, 6, 14. *Caldwell v. United States*, 595 A.2d 961, 1991 D.C. App. LEXIS 184 (1991).

Court will be guided by principle of proportionality in determining whether or not sentence for contempt bears reasonable relationship to underlying conduct. *Caldwell v. United*

States, 595 A.2d 961, 1991 D.C. App. LEXIS 184 (1991).

It was not inappropriate for trial judge to consider danger presented to complainant by defendant's disobedience of his pretrial release order when sentencing defendant for contempt. *Caldwell v. United States*, 595 A.2d 961, 1991 D.C. App. LEXIS 184 (1991).

Even where it is clear that trial judge recognizes that he or she has discretion to exercise and does so, trial judge must consider appropriate factors in exercising discretion and judge's ultimate order must fall within permissible alternatives and judge must provide record sufficient to permit appellate review for determination of whether discretion in imposing contempt sentence has been abused. *Caldwell v. United States*, 595 A.2d 961, 1991 D.C. App. LEXIS 184 (1991).

Sentence of 7 to 21 years for defendant's contempt conviction for violating court order was excessive under proportionality principle; only question before judge was what sentence was necessary to vindicate authority of court, but sentence imposed exceeded three to nine-year sentences that defendant received for assault with automobile, act underlying finding of contempt, and judge gave no indication that such a sentence was required to vindicate authority of court. D.C. Code 1981, § 11-944. *Caldwell v. United States*, 595 A.2d 961, 1991 D.C. App. LEXIS 184 (1991).

Indeterminate Sentence Act does not apply to a criminal contempt conviction. D.C. Code 1981, § 24-203(a). In re *Neal*, 475 A.2d 390, 1984 D.C. App. LEXIS 377 (1984).

Trial judge has broad discretion in imposing sentence for criminal contempt. In re *Neal*, 475 A.2d 390, 1984 D.C. App. LEXIS 377 (1984).

Ten-dollar fine for contempt arising out of counsel's willful failure to comply with court order to appear in court promptly at designated time was not excessive. D.C. Code SCR, Criminal Rule 42(a). In re *Hunt*, 367 A.2d 155, 1976 D.C. App. LEXIS 439 (1976), writ of certiorari denied by 434 U.S. 817, 98 S. Ct. 54, 54 L. Ed. 2d 72, 1977 U.S. LEXIS 2769 (1977).

Two hundred dollar fine for contempt upon failure of counsel to return directly to trial court as ordered after being allowed to attend hearing in another court is not excessive. In re *Rosen*, 315 A.2d 151, 1974 D.C. App. LEXIS 367 (1974), writ of certiorari denied by 419 U.S. 964, 95 S. Ct. 224, 42 L. Ed. 2d 178, 1974 U.S. LEXIS 3058 (1974).

— Remission or discharge from imprisonment, sentencing or fine.

Test to determine whether confinement for contempt no longer is coercive is whether contemnor has shown there is no realistic possibility or substantial likelihood that continued confinement will accomplish its coercive pur-

pose. *Morgan v. Foretich*, 564 A.2d 1, 1989 D.C. App. LEXIS 159 (1989).

When determining whether confinement for contempt no longer is coercive, relevant factors to consider include contemnor's age and health, and contemnor's own stated reasons for refusing to comply. *Morgan v. Foretich*, 564 A.2d 1, 1989 D.C. App. LEXIS 159 (1989).

Summary proceedings.

— Contempts in presence of court, summary proceedings.

Courtroom behavior of tenant who had appeared before court in connection with rent dispute, who had on two prior occasions been warned about his conduct and who was held in contempt after he made profane comment within hearing of judge, did not rise to level of exceptional circumstances justifying use of summary criminal contempt procedure; statement which led court to hold tenant in contempt was made after his case was over and tenant was leaving or had left courtroom, and did not disrupt his own or any other case pending in court. Criminal Rule 42(a). *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Defendant's act of allegedly pointing at trial judge did not create extreme emergency in courtroom that warranted summary criminal contempt disposition to maintain order, vindicate court's authority, or preserve court's dignity; sentencing of defendant's friend was over and defendant had left courtroom before trial judge acted, and defendant's intent behind gesture was ambiguous. Criminal Rule 42(a). *McCormick v. United States*, 635 A.2d 347, 1993 D.C. App. LEXIS 316 (1993).

A willful failure of counsel to appear in court on time may be punished summarily as contempt committed in the presence of the court. D.C. Code SCR, Civil Rule 104(c)(4); D.C. Code SCR, Criminal Rule 42(a, b). *Appeal of Gregory*, 387 A.2d 720, 1978 D.C. App. LEXIS 386 (1978).

Counsel's willful failure to comply with court order to appear in court promptly at designated time was contemptuous conduct which occurred "in the presence of the court" and was properly disposed of summarily, without hearing before another judge. D.C. Code SCR, Criminal Rule 42(a, b). *In re Hunt*, 367 A.2d 155, 1976 D.C. App. LEXIS 439 (1976), writ of certiorari denied by 434 U.S. 817, 98 S. Ct. 54, 54 L. Ed. 2d 72, 1977 U.S. LEXIS 2769 (1977).

Where appellant was committed for contempt until he obeyed presumptively valid court order to supply handwriting exemplar, and his contemptuous conduct was committed in presence of court, refusal to supply exemplar amounted to civil contempt for which statutory procedures for formal notice and hearing in

criminal contempt cases were not required. D.C. Code SCR, Criminal Rule 42(b). *Jennings v. United States*, 354 A.2d 855, 1976 D.C. App. LEXIS 503 (1976).

If counsel in open court intentionally obstructs orderly administration of justice, trial court is justified and empowered to find him in contempt without further proceedings. D.C. Code SCR, Criminal Rule 42(a). *In re Nesbitt*, 345 A.2d 154, 1975 D.C. App. LEXIS 251 (1975).

One who is tardy in appearing before court or does not appear is not necessarily to be dealt with in summary fashion. D.C. Code SCR, Criminal Rule 42(a). *In re Brown*, 320 A.2d 92, 1974 D.C. App. LEXIS 216 (1974).

Where attorney did not consciously and intentionally absent himself from court in criminal case, trial court erred in exercising its summary power to punish attorney for contempt. D.C. Code SCR, Criminal Rule 42(a). *In re Brown*, 320 A.2d 92, 1974 D.C. App. LEXIS 216 (1974).

Deliberate and knowing violation of order that trial counsel return directly from another court for trial which has been postponed to enable counsel to attend hearing at the other court is a contempt committed "in the presence of the court" and is properly disposed of summarily, without hearing before another judge. D.C. Code SCR, Criminal Rule 42(a, b); D.C. Code § 11-944. *In re Rosen*, 315 A.2d 151, 1974 D.C. App. LEXIS 367 (1974), writ of certiorari denied by 419 U.S. 964, 95 S. Ct. 224, 42 L. Ed. 2d 178, 1974 U.S. LEXIS 3058 (1974).

— In general.

Summary contempt is necessary and proper course to preserve order essential to functioning of courts. *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Summary punishment through contempt proceeding always, and rightly, is regarded with disfavor. *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Summary criminal contempt should be directed only at conduct that poses such an open threat to orderly procedure of court, and such a flagrant defiance of person and presence of judge, that were it not instantly suppressed and punished, demoralization of court's authority would follow. Criminal Rule 42(a). *Brooks v. United States*, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Summary criminal contempt is restricted to those situations where, quite literally, court's business cannot proceed unless punishment is imposed on party whose contumacious acts are actively preventing administration of justice, and such proceedings are thus reserved for exceptional circumstances and should be exercised sparingly. Criminal Rule 42(a). *Brooks v.*

United States, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Summary criminal contempt rule is intended to preserve ability of court to conduct its business, and should be invoked only where party has interfered with judges' efforts to maintain orderly system of justice and to keep abreast of their calendars. Criminal Rule 42(a). Brooks v. United States, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Judge offended by act perceived as contumacious is required to explore and reject all less restrictive alternatives before going forward with summary contempt proceeding, and although warning putative contemnor not to commit acts later complained of may sometimes be effective way for trial judge to try to prevent or diminish occurrence of act itself, it does not meet requirement. Criminal Rule 42(a). Brooks v. United States, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

Trial courts faced with necessity to institute contempt proceedings, after commission of offensive act, may resort to summary contempt procedures only when nonsummary procedures are insufficiently swift and forceful to alleviate urgent need for restoration of court order so that court's business may continue. Criminal Rule 42. Brooks v. United States, 686 A.2d 214, 1996 D.C. App. LEXIS 275 (1996).

If alleged contumacious conduct is not heard by trial judge, or if it occurs outside presence of court, any contempt proceeding, involving adult, may only be conducted by notice. Criminal Rule 42(b). In re L.G., 639 A.2d 603, 1994 D.C. App. LEXIS 42 (1994).

Factual dispute over what actually transpired in courtroom required trial judge to conduct nonsummary contempt proceedings at which defendant could have counsel, prepare defense, and call witnesses, rather than sum-

marily sentencing defendant to jail for criminal contempt; trial judge claimed that defendant pointed at judge, but defendant claimed he merely waved. Criminal Rule 42(a, b). McCormick v. United States, 635 A.2d 347, 1993 D.C. App. LEXIS 316 (1993).

Genuine issues of fact concerning matters outside presence of court did not mandate a notice and hearing and, hence, did not preclude court from proceeding summarily against contemnee for failure to appear on time in court for contemnee did not point to any factual issues which, if resolved in his favor, would have constituted justification for his conduct. D.C. Code SCR, Civil Rule 104(c)(4); D.C. Code SCR, Criminal Rule 42(a, b). Appeal of Gregory, 387 A.2d 720, 1978 D.C. App. LEXIS 386 (1978).

Notwithstanding claim that trial judge construed contemnee's conduct as a personal affront rather than as disrespect to court itself, where conduct for which contemnee was found in contempt was his failure to appear on time in court, not his demeanor while there, summary disposition accorded matter by trial judge was appropriate. D.C. Code SCR, Civil Rule 104(c)(4); D.C. Code SCR, Criminal Rule 42(a, b). Appeal of Gregory, 387 A.2d 720, 1978 D.C. App. LEXIS 386 (1978).

Trial court did not err in applying rule governing summary disposition to attorney's contempt proceeding which arose out of attorney's failure to obey court order to appear for trial. D.C. Code SCR, Criminal Rule 42(a, b). In re Schaeffer, 370 A.2d 1362, 1977 D.C. App. LEXIS 437 (1977).

Trial court has power, in appropriate circumstances, to summarily hold an attorney in contempt of court. D.C. Code SCR, Criminal Rule 42(a). In re Brown, 320 A.2d 92, 1974 D.C. App. LEXIS 216 (1974).

§ 11-945. Oaths, affirmations, and acknowledgments.

Each judge and each employee of the Superior Court authorized by the chief judge may administer oaths and affirmations and take acknowledgments.

(July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-945.

1973 Ed., § 11-945.

§ 11-946. Rules of court.

The Superior Court shall conduct its business according to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure (except as otherwise provided in Title 23) unless it prescribes or adopts rules which modify those Rules. Rules which modify the Federal Rules shall be submitted for the approval of the District of Columbia Court of Appeals, and they shall not take effect until approved by that court. The Superior Court may adopt and

enforce other rules as it may deem necessary without the approval of the District of Columbia Court of Appeals if such rules do not modify the Federal Rules. The Superior Court may appoint a committee of lawyers to advise it in the performance of its duties under this section.

(July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111.)

Cross references. — Admission to bar, rules, see § 11-2501.

Attachment and garnishment of wages, rules of procedure concerning, see § 16-581.

Criminal Division rules and regulations, see § 16-701.

District of Columbia Court of Appeals, rules, see § 11-743.

Process, see § 11-943.

Professional bondsmen, rules concerning, see § 23-1108.

Subpoenas, see § 11-942.

Superior Court rules, applicability to Small Claims and Conciliation Branch, see § 16-3901.

Tax Division rules and regulations, see § 11-1203.

Public assistance, action for support, responsible relatives, see § 4-213.01.

Section references. — This section is referred to in § 16-701.

Prior Codifications. — 1981 Ed., § 11-946. 1973 Ed., § 11-946.

CASE NOTES

ANALYSIS

Admission to practice.

Approval of Court of Appeals.

Construction and application of rules.

Power to regulate procedure.

Admission to practice.

A court has an inherent right to make rules governing the practice of law before it and to promulgate rules concerning who may practice law before it. (Per Yeagley, J., with one Judge concurring in the result and another Judge concurring in part.) D.C. Code § 11-921(a)(2); D.C. Code SCR, Civil Rule 101; D.C. Code Court of Appeals Rules, Bar Rule 13. *J. H. Marshall & Associates, Inc. v. Burleson*, 313 A.2d 587, 1973 D.C. App. LEXIS 411 (1973).

Approval of Court of Appeals.

Court of Appeals possesses ultimate authority to approve or reject proposed superior court rules that modify existing federal rules of procedure. D.C. Code 1981, § 11-946. *Johnson v. United States*, 647 A.2d 1124, 1994 D.C. App. LEXIS 149 (1994).

Congress' grant of authority to Court of Appeals to reject outright the application of federal rule changes to superior court must sensibly include lesser power to stay effectiveness of those rules to give deliberative process of both trial and appellate courts time to work. D.C. Code 1981, § 11-946. *Johnson v. United States*, 647 A.2d 1124, 1994 D.C. App. LEXIS 149 (1994).

If Court of Appeals were acting *ultra vires* in granting stays of effective date of promulgated changes in Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure, such practice would unmistakably present issue of

exceptional and recurring importance necessitating en banc consideration. D.C. Code 1981, § 11-946; Court of Appeals Rule 40(e)(2). *Johnson v. United States*, 647 A.2d 1124, 1994 D.C. App. LEXIS 149 (1994).

It would be contrary to statute, which gives Court of Appeals ultimate authority to approve or reject proposed superior court rules that modify existing federal rules of procedure, if Court of Appeals were routinely, without adequate justification, to grant stays of one-year duration. D.C. Code 1981, § 11-946. *Johnson v. United States*, 647 A.2d 1124, 1994 D.C. App. LEXIS 149 (1994).

Court of Appeals' holding that superior court's adoption of rule permitting termination of parental rights based on neglect was in excess of its statutory authority would be given prospective application only. D.C. Code SCR, Neglect Rule 18(c). In re P., 359 A.2d 11, 1976 D.C. App. LEXIS 520 (1976).

It is for the Court of Appeals, and not for individual judges or commissioners to determine the validity of rules properly adopted by the Board of Judges of the Superior Court. *District of Columbia ex rel. K.K. v. W.C.R.*, 117 WLR 1373 (Super. Ct. 1989).

Construction and application of rules.

Rule of civil procedure requiring pretrial disclosure of facts known and opinions held by experts is construed in light of the corresponding federal rule, taking guidance from both the advisory committee notes to the federal rule and federal court decisions interpreting the rule. *Gubbins v. Hurson*, 885 A.2d 269, 2005 D.C. App. LEXIS 535 (2005).

Pretrial disclosure requirement of rule of civil procedure governing discovery of facts

known and opinions held by experts applies only to facts and opinions that the expert acquired or developed in anticipation of litigation or for trial. *Gubbins v. Hurson*, 885 A.2d 269, 2005 D.C. App. LEXIS 535 (2005).

Statute requiring the superior court to conduct its business according to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure does not grant authority for rule allowing the Court of Appeals to permit an appeal from an order of the superior court granting or denying class action certification, even if the superior court does not certify that the interlocutory order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal may materially advance the ultimate termination of the litigation or case; the statute addresses only the conduct of business in the superior court, and the Court of Appeals' jurisdiction is not part of the business of the superior court. *Ford v. Chartone, Inc.*, 834 A.2d 875, 2003 D.C. App. LEXIS 628 (2003), remanded by 908 A.2d 72, 2006 D.C. App. LEXIS 533 (D.C. 2006).

Civil rule providing that when last day of time period is Saturday, Sunday or legal holiday the period runs until end of next day which is not one of the aforementioned days is construed in light of meaning of federal rule, since civil rule is virtually identical to federal rule. Civil Rule 6(a); Fed. Rules Civ. Proc. Rule 6(a), 18 U.S.C. Easter Seal Soc'y for Disabled Children v. Berry, 627 A.2d 482, 1993 D.C. App. LEXIS 144 (1993).

If a Superior Court rule is identical to or substantially identical to a corresponding federal rule, it would have, just as the federal rule, the force and effect of law. *Varela v. Hi-Lo Powered Stirrups*, 424 A.2d 61, 1980 D.C. App. LEXIS 396 (1980).

A superior court rule which is literally or substantially identical to a corresponding federal rule is to be construed in light of the meaning of the federal rule. D.C. Code SCR, Civil Rules 41, 41(b); D.C. Code § 11-946. *Taylor v. Washington Hospital Center*, 407 A.2d 585, 1979 D.C. App. LEXIS 480 (1979), writ of certiorari denied by 446 U.S. 921, 100 S. Ct. 1857, 64 L. Ed. 2d 275, 1980 U.S. LEXIS 2271 (1980).

Superior Court Rule governing business records exception, as a procedural rule, has full force of law. D.C. Code SCR, Civil Rule 43-I. *Sullivan v. United States*, 404 A.2d 153, 1979 D.C. App. LEXIS 414 (1979).

Superior Court Rule governing business records exception is applicable to criminal cases in superior court. D.C. Code SCR, Civil Rule 43-I; D.C. Code SCR, Criminal Rule 57(a). *Sullivan v. United States*, 404 A.2d 153, 1979 D.C. App. LEXIS 414 (1979).

Since it is provided by statute that business of Superior Court shall be conducted according to applicable federal rules unless modifications thereof are approved by the court, Rules of Superior Court must be construed in light of meaning of corresponding federal rule and, as with federal rules, Superior Court's rules, at least when they are substantially identical to federal rules, have force and effect of law. D.C. Code SCR, Criminal Rule 43; D.C. Code §§ 11-946, 16-701. *Campbell v. United States*, 295 A.2d 498, 1972 D.C. App. LEXIS 230 (1972).

Power to regulate procedure.

District of Columbia Superior Court, acting through Board of Judges, had authority to promulgate Child Support Guideline as court rule, so long as judges and hearing commissioners continued to exercise their discretion to achieve equitable results consistent with existing law. Social Security Act, § 467, as amended, 42 U.S.C. § 667; D.C. Code 1981, § 11-1732(j)(4)(A), (n). *Fitzgerald v. Fitzgerald*, 566 A.2d 719, 1989 D.C. App. LEXIS 239 (1989).

Congress did not intend to grant to superior court for the District of Columbia the power to adopt rules abridging, enlarging or modifying any substantive right, a power which it withheld from the United States Supreme Court with respect to its rule-making power. 18 U.S.C. § 2072; D.C. Code § 11-946. In re C.A.P., 356 A.2d 335, 1976 D.C. App. LEXIS 519 (1976).

The superior court for the District of Columbia exceeded its statutory grant of rule-making power by enacting procedural rule which abridged substantive right of a parent, i. e., rule permitting permanent severance of parent-child relationship in a nonadoption proceeding. D.C. Code § 11-946; D.C. Code SCR, Neglect Rule 18(c). In re C.A.P., 356 A.2d 335, 1976 D.C. App. LEXIS 519 (1976).

Superior court's *parens patriae* power was insufficient authority for its enactment of rule permitting termination of parental rights in nonadoption proceedings. D.C. Code SCR, Neglect Rule 18(c). In re C.A.P., 356 A.2d 335, 1976 D.C. App. LEXIS 519 (1976).

Merely classifying rule permitting dismissal of motion for post-conviction relief when government has been prejudiced by delayed filing as "legislative in nature," because of general statutory power of superior court to adopt procedural rules, did not overcome principle that board of judges could not adopt any rule that conflicted with controlling case law. *U.S. v. Arnold*, 133 WLR 211 (Super. Ct. 2004).

Under this section, the Superior Court is not precluded from adopting rules which "change prior case law" but rather from adopting rules which "enlarge, modify, or abridge substantive rights." *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989).

Section 11-1732(j)(4)(A) constitutes a specific delegation of authority to the Superior Court to adopt a rule setting forth child support guide-

lines; as such, it would prevail over the general jurisdictional provision of this section. *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989).

CHAPTER 11. FAMILY COURT OF THE SUPERIOR COURT.

Sec.

- 11-1101. Jurisdiction of the Family Court.
- 11-1102. Use of alternative dispute resolution.
- 11-1103. Standards of practice for appointed counsel.

Sec.

- 11-1104. Administration.
- 11-1105. Social services and other related services.
- 11-1106. Reports to Congress.

§ 11-1101. Jurisdiction of the Family Court.

(a) *In General.* — The Family Court of the District of Columbia shall be assigned and have original jurisdiction over —

- (1) actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, pendente lite and permanent, and for support and custody of minor children;
- (2) applications for revocation of divorce from bed and board;
- (3) actions to enforce support of any person as required by law;
- (4) actions seeking custody of minor children, including petitions for writs of habeas corpus;
- (5) actions to declare marriages void;
- (6) actions to declare marriages valid;
- (7) actions for annulments of marriage;
- (8) determinations and adjudications of property rights, both real and personal, in any action referred to in this section, irrespective of any jurisdictional limitation imposed on the Superior Court;
- (9) proceedings in adoption;
- (10) proceedings under the Act of July 10, 1957 (D.C. Code, secs. 30-301 to 30-324 [D.C. Official Code, §§ 46-701 to 46-724]);
- (11) proceedings to determine paternity of any child born out of wedlock;
- (12) civil proceedings for protection involving intrafamily offenses, instituted pursuant to chapter 10 of title 16;
- (13) proceedings in which a child, as defined in § 16-2301, is alleged to be delinquent, neglected, or in need of supervision;
- (14) proceedings under chapter 5 of title 21 relating to the commitment of the mentally ill;
- (15) proceedings under chapter 13 of title 7 relating to the commitment of the at least moderately mentally retarded; and
- (16) proceedings under Interstate Compact on Juveniles (described in title IV of the District of Columbia Court Reform and Criminal Procedure Act of 1970).

(b) *Definition.* —

(1) *In general.* — In this chapter, the term “action or proceeding” with respect to the Family Court refers to cause of action described in paragraphs (1) through (16) of subsection (a).

(2) *Exception.* — An action or proceeding may be assigned to or retained by cross-jurisdictional units established by the Superior Court, including the Domestic Violence Unit.

(July 29, 1970, 84 Stat. 488, Pub. L. 91-358, title I, 111; Dec. 7, 1970, 84 Stat.

1390, Pub. L. 91-530, 2(a)(2), (3); Jan. 8, 2002, 115 Stat. 2108, Pub. L. 107-114, § 4(a).)

Cross references. — Compulsory school attendance and work permit cases, jurisdiction, see § 38-209.

Hearing commissioners, actions involving establishment or enforcement of child support under this section, see § 11-1732.

Parentage, tests to establish, see § 16-2343.

Parentage, time of bringing complaint, see § 16-2342.

Service of notice, actions brought under this section, see § 46-206.

Uniform child custody jurisdiction and marital or parent and child long-arm jurisdiction, see § 42-3401.01 et seq.

Section references. — This section is referred to in §§ 11-1732, 16-916.01, 16-924, 16-2305, 16-2331, 16-2341, 16-2342, 16-2343, 16-2344, 16-2348, and

Prior Codifications. — 1981 Ed., § 11-1101.

1973 Ed., § 11-1101.

Effect of amendments. — Pub. L. 107-114 rewrote the section.

References in text. — The Interstate Compact on Juveniles, referred to in paragraph (16) of this section, is codified in § 24-1102.

Title IV of the District of Columbia Court Reform and Criminal Procedure Act of 1970, referred to in subsec. (a)(16), is Pub. L. 91-358,

84 Stat. 473, July 29, 1970, which is not codified.

Editor's notes. — Pub. L. 107-114, § 4(c), provided:

“Plan for integrating computer systems.—”

“(1) In general.—Not later than 6 months after the date of the enactment of this Act Jan. 8, 2002, the Mayor of the District of Columbia shall submit to the President and Congress a plan for integrating the computer systems of the District government with the computer systems of the Superior Court of the District of Columbia so that the Family Court of the Superior Court and the appropriate offices of the District government which provide social services and other related services to individuals and families served by the Family Court of the Superior Court (including the District of Columbia Public Schools, the District of Columbia Housing Authority, the Child and Family Services Agency, the Office of the Corporation Counsel, the Metropolitan Police Department, the Department of Health, and other offices determined by the Mayor) will be able to access and share information on the individuals and families served by the Family Court.

“(2) Authorization of appropriations.—There are authorized to be appropriated to the Mayor of the District of Columbia such sums as may be necessary to carry out paragraph (1).”

CASE NOTES

ANALYSIS

Alimony and marital property disputes.

Child support.

Children out-of-wedlock.

Delinquent children.

Dependent and neglected juveniles.

Divorces.

Foreign property.

In general.

Parties.

Property settlement.

Remand.

Transfers to other divisions.

Alimony and marital property disputes.

Family Division had jurisdiction to order specific performance of marital property settlement regardless of fact that settlement was not merged into divorce decree, since Family Division is generally entrusted with resolving property disputes between spouses. D.C. Code 1981, § 16-910. *Clay v. Faison*, 583 A.2d 1388, 1990 D.C. App. LEXIS 322 (1990).

The award of alimony is a matter committed to the sound discretion of the trial court and its

determination in respect thereto will not be disturbed on appeal in absence of a clear abuse. *Leftwich v. Leftwich*, 442 A.2d 139, 1982 D.C. App. LEXIS 292 (1982).

There are no fixed rules for determining if and in what amount alimony should be awarded; a general guideline is that alimony is intended to provide reasonable and necessary support to the recipient. *Leftwich v. Leftwich*, 442 A.2d 139, 1982 D.C. App. LEXIS 292 (1982).

The Domestic Relations Branch of the Superior Court can adjudicate the respective rights of the parties to divorce action in any or all property to which one or the other makes claim. Act of Sept. 9, 1959, 73 Stat. 473. *Lyons v. Lyons*, 295 A.2d 903, 1972 D.C. App. LEXIS 267 (1972).

Child support.

Trial court had subject matter to issue permanent child support order, even though parties no longer resided in District of Columbia, where mother and child resided in District at time mother filed action and issues to be determined at time of filing had not yet been re-

solved. *Brown v. Hines-Williams*, 2 A.3d 1077, 2010 D.C. App. LEXIS 499 (2010).

Children out-of-wedlock.

The superior court has jurisdiction to adjudicate a nonsupport paternity action under its general equity jurisdiction. D.C. Code 1981, §§ 11-921, 11-1101 et seq., 16-2342; District of Columbia Court Reform and Criminal Procedure Act of 1970, § 101 et seq., 84 Stat. 473. In re D.M., 562 A.2d 618, 1989 D.C. App. LEXIS 131 (1989).

Sole jurisdictional basis for action to enforce visitation rights on behalf of married parent of child living apart from spouse with whom child resides where neither divorce nor custody was at issue would be general equity jurisdiction of trial court and all normal equitable doctrines would be available to defending party in determination of visitation rights. D.C. Code § 11-921(a). *Felder v. Allsopp*, 391 A.2d 243, 1978 D.C. App. LEXIS 557 (1978).

In case of parent suing to establish paternity in order to enforce a support obligation, filing within three years after birth of child is jurisdictional prerequisite. D.C. Code §§ 11-1101, 16-2342. *Felder v. Allsopp*, 391 A.2d 243, 1978 D.C. App. LEXIS 557 (1978).

No division of the Superior Court has jurisdiction to declare paternity once the putative father is deceased because that right abated at his death. In re Estate of Glover, 110 WLR 2809 (Super. Ct. 1982).

No division of the Superior Court may declare that a deceased insured was the father of a child born out of wedlock; however, the Court can certify a complaint which states a cognizable civil cause of action for trial on the issue of whether a support obligation arose during the life of the insured, so as to entitle the illegitimate child, if acknowledged by him, to insurance proceeds. *Carrington v. Metropolitan Life Ins. Co.*, 111 WLR 53 (Super. Ct. 1983).

In a paternity action, where neither the parties nor the child resided in the District prior to the filing of action, where the child was not conceived in the District and had no other legal or personal connections with the District, and where the only connection with the District was the respondent's employment, but the pregnancy did not emanate from any such relationship, court lacked personal subject matter jurisdiction. *T.M.P. v. G.C.M.*, 124 WLR 233 (Super. Ct. 1995).

Delinquent children.

As general rule, family division of superior court has exclusive jurisdiction over juveniles accused of delinquent acts that would be criminal if committed by person 18 years of age or older. D.C. Code 1981, §§ 11-1101(13), 16-2301(3). *Lucas v. United States*, 522 A.2d 876, 1987 D.C. App. LEXIS 309 (1987).

Criminal division of superior court retained jurisdiction and properly entertained second trial of defendant for manslaughter, committed when defendant was 16 years of age, after first jury returned guilty verdict of involuntary manslaughter instead of first-degree murder, despite reversal of defendant's conviction for lesser included offense of murder so long as defendant was originally charged with first-degree murder. D.C. Code 1981, §§ 11-1101(13), 16-2301(3). *Lucas v. United States*, 522 A.2d 876, 1987 D.C. App. LEXIS 309 (1987).

With respect to statute defining term child for purposes of determining whether accused is subject to juvenile or adult court, accused legally became 18 years old on day of his birthday and not day before it, and thus he was properly found to be subject to exclusive jurisdiction of family division pursuant to another statute, where he was arrested and charged on day before his eighteenth birthday. D.C. Code §§ 11-1101(13), 16-2301(3). *United States v. Tucker*, 407 A.2d 1067, 1979 D.C. App. LEXIS 468 (1979).

Statutory provisions limiting criminal division jurisdiction to offenses committed within the District's boundaries did not apply, on theory that delinquency adjudication presupposed commission of criminal acts, to delinquency proceedings and thus did not limit delinquency petitions to violations that occurred within boundaries of the District of Columbia. D.C. Code §§ 11-923(b)(1), 11-1101, 11-1101(13), 16-2301(6, 7). In re W., 391 A.2d 1385, 1978 D.C. App. LEXIS 315 (1978).

Statutory provision proscribing assaults on officers or employees of juvenile facility "located within the District of Columbia or elsewhere" was intended to reach attacks on personnel of juvenile facility taking place outside, as well as inside, the District, and thus family division had jurisdiction of proceedings brought against two juveniles based upon their assaults on counselors at District juvenile facility located in Maryland. D.C. Code §§ 16-2301(7), 22-505(a). In re W., 391 A.2d 1385, 1978 D.C. App. LEXIS 315 (1978).

Fact that verdict of not guilty of armed robbery was returned, in proceeding in which 16-year-old accused was charged as an adult, did not require that verdicts of guilty of robbery and assault with a dangerous weapon be certified to family division for disposition. D.C. Code §§ 11-1101(13), 16-2301(3)(A, B). *Brown v. United States*, 343 A.2d 48, 1975 D.C. App. LEXIS 222 (1975).

Even if United States attorney's election to charge juvenile as an adult is made after he has been subject to jurisdiction of family division by reason of a delinquency petition filed against him, attorney's statutory authority to determine whether juvenile, who is 16 years of age and who is charged with certain enumerated

offenses, should be charged as adult is unfettered by statute, which provides that, on corporation counsel's motion for transfer of child for trial as adult, transfer can be ordered only after a hearing to determine prospects for child's rehabilitation in family division. D.C. Code §§ 11-1101(13), 11-1501 et seq., 16-2301(3)(A), 16-2307; 18 U.S.C. § 5010(a). *Brown v. United States*, 343 A.2d 48, 1975 D.C. App. LEXIS 222 (1975).

Dependent and neglected juveniles.

Superior Court's authority under the divorce law does not permit it to conduct a de facto child neglect proceeding without invoking the procedures prescribed by the legislature for neglect proceedings. *W.D. v. C.S.M.*, 906 A.2d 317, 2006 D.C. App. LEXIS 499 (2006).

Trial court retained its subject matter jurisdiction over neglected child after date when commitment order was no longer in effect, where court did not dismiss neglect petition before government filed motion to extend commitment, but instead court subsequently extended commitment nunc pro tunc. D.C. Code 1981, § 16-2322(b). *Appeal of A.H.*, 590 A.2d 123, 1991 D.C. App. LEXIS 90 (1991).

Divorces.

Superior court had jurisdiction to enforce support obligations under Texas divorce decree. D.C. Code 1981, §§ 11-1101(3), 16-916(a). *Brown v. Dyer*, 489 A.2d 1081, 1985 D.C. App. LEXIS 345 (1985).

Despite fact that mother characterized her case as action for breach of contract rather than for support, superior court had subject matter jurisdiction, where father received ample notice of nature and subject matter of claim and, since no contract remained in existence once property settlement had been incorporated into Texas divorce decree, only basis for suit was father's statutory and common-law duty to support his minor child. D.C. Code 1981, § 11-1101(3). *Brown v. Dyer*, 489 A.2d 1081, 1985 D.C. App. LEXIS 345 (1985).

Family division of the superior court had exclusive jurisdiction over wife's suit against her former husband to enforce property settlement agreement by subjecting real property situated within the District of Columbia and held by parties as tenants in entirety to claims by wife against nonresident husband arising out of property settlement agreement. D.C. Code § 11-1101. *Travis v. Benson*, 360 A.2d 506, 1976 D.C. App. LEXIS 320 (1976).

Foreign property.

In a divorce action, the court may adjudicate the rights to marital property located outside the District, and may issue orders requiring the parties to make transfers implementing the court's ruling, even though the court cannot directly award and apportion the foreign prop-

erty. *Davis v. Davis*, 957 A.2d 576, 2008 D.C. App. LEXIS 398 (2008).

In general.

Family Division had jurisdiction of offenses which occurred before Act became effective. D.C. Code § 16-1000 et seq. *United States v. Harrison*, 461 F.2d 1209, 1972 U.S. App. LEXIS 11554 (C.A.D.C. 1972).

Family Division of Superior Court was not jurisdictionally prohibited from entertaining former wife's complaint for entry of judgment by confession relative to post-dissolution settlement, where, although original action could have been brought in Civil Division, action stemmed from suit, on wife's motion for contempt, which was indisputably within Family Division's jurisdiction, and underlying jurisdictional grants to Family Division pointed in favor of its retaining jurisdiction over the complaint for entry of judgment by confession. *Hackney v. Chamblee*, 980 A.2d 427, 2009 D.C. App. LEXIS 368 (2009).

Superior court, as constituted under District of Columbia Court Reform and Criminal Procedure Act, is not court of limited jurisdiction but court of general jurisdiction with power to adjudicate any civil action at law or in equity involving local laws; although the superior court is separated into number of divisions, such functional divisions do not delimit their power as tribunals of the superior court with general jurisdiction to adjudicate civil claims and disputes. D.C. Code §§ 11-101 et seq., 11-910, 11-921. *Andrade v. Jackson*, 401 A.2d 990, 1979 D.C. App. LEXIS 363 (1979).

Parties.

Statutes governing family court's jurisdiction of actions seeking custody of minor children contemplate an award of custody only as between parents who are parties to a divorce proceeding. *K.R. v. C.N.*, 969 A.2d 257, 2009 D.C. App. LEXIS 62 (2009).

Property settlement.

Trial court was not required to address property issues in order to entertain divorce proceeding initiated by husband, where court made no finding that it had personal jurisdiction over wife, who lived in Mississippi. *Davis v. Davis*, 957 A.2d 576, 2008 D.C. App. LEXIS 398 (2008).

Remand.

Remand for a decision to retain jurisdiction over husband's divorce action against non-resident wife or to dismiss the action on forum non conveniens grounds was required by possibility that the trial court dismissed the action only because of its error in thinking that it was required to adjudicate the parties' property rights if it exercised jurisdiction. *Davis v. Da-*

vis, 957 A.2d 576, 2008 D.C. App. LEXIS 398 (2008).

Transfers to other divisions.

Even had Family Division lacked jurisdiction to order specific performance of marital property settlement agreement because it was not merged with divorce decree, it would have been improper to dismiss ex-wife's complaint; rather, case should have been transferred to Civil Division. *Clay v. Faison*, 583 A.2d 1388, 1990 D.C. App. LEXIS 322 (1990).

Family division of superior court had jurisdiction to annul marriage of decedent, even though primary object of action was to bar decedent's putative wife from participation in his intestate estate, and to declare alleged common-law wife to be his lawful widow, but where estate owned cause of action which could bring substantial amount of money into the estate, interest in orderly judicial procedure in determining whether alleged common-law wife

of decedent was his lawful widow and, consequently, whether she could bring wrongful death action on her own behalf and that of children allegedly fathered by decedent required that her status be resolved in first instance by probate division of superior court. D.C. Code §§ 11-504, 11-902. *Andrade v. Jackson*, 401 A.2d 990, 1979 D.C. App. LEXIS 363 (1979).

Where interest in orderly judicial procedure required that status of alleged common-law wife, who brought action before family division to annul decedent's marriage as having been void ab initio, to declare herself as decedent's lawful widow, and to declare their children to be lawful heirs of decedent, as widow first be determined by probate division of superior court, appropriate remedy was to transfer the case to the probate division rather than to dismiss the action. *Andrade v. Jackson*, 401 A.2d 990, 1979 D.C. App. LEXIS 363 (1979).

§ 11-1102. Use of alternative dispute resolution.

To the greatest extent practicable and safe, cases and proceedings in the Family Court of the Superior Court shall be resolved through alternative dispute resolution procedures, in accordance with such rules as the Superior Court may promulgate.

(Jan. 8, 2002, 115 Stat. 2100, Pub. L. 107-114, § 4(a).)

§ 11-1103. Standards of practice for appointed counsel.

The Superior Court shall establish standards of practice for attorneys appointed as counsel in the Family Court of the Superior Court.

(Jan. 8, 2002, 115 Stat. 2108, Pub. L. 107-114, § 4(a).)

§ 11-1104. Administration.

(a) *"One Family, One Judge" Requirement for Cases and Proceedings.* — To the greatest extent practicable, feasible, and lawful, if an individual who is a party to an action or proceeding assigned to the Family Court has an immediate family or household member who is a party to another action or proceeding assigned to the Family Court, the individual's action or proceeding shall be assigned to the same judge or magistrate judge to whom the immediate family member's action or proceeding is assigned.

(b) *Retention of Jurisdiction Over Cases.* —

(1) *In general.* — In addition to the requirement of subsection (a), any action or proceeding assigned to the Family Court of the Superior Court shall remain under the jurisdiction of the Family Court until the action or proceeding is finally disposed, except as provided in paragraph (2) (D).

(2) *One family, one judge.* —

(A) *For the duration.* — An action or proceeding assigned pursuant to

this subsection shall remain with the judge or magistrate judge in the Family Court to whom the action or proceeding is assigned for the duration of the action or proceeding to the greatest extent practicable, feasible, and lawful, subject to subparagraph (2) (C).

(B) *All cases involving an individual.* — If an individual who is a party to an action or proceeding assigned to the Family Court becomes a party to another action or proceeding assigned to the Family Court, the individual's subsequent action or proceeding shall be assigned to the same judge or magistrate judge to whom the individual's initial action or proceeding is assigned to the greatest extent practicable and feasible.

(C) *Family Court case retention.* — If the full term of a Family Court judge to whom the action or proceeding is assigned is completed prior to the final disposition of the action or proceeding, the presiding judge of the Family Court shall ensure that the matter or proceeding is reassigned to a judge serving on the Family Court.

(D) *Exception.* — A judge whose full term on the Family Court is completed but who remains in Superior Court may retain the case or proceeding for not more than 6 months or, in extraordinary circumstances, for not more than 12 months after ceasing to serve if —

(i) the case remains at all times in full compliance with Public Law 105-89, if applicable; and

(ii) if Public Law 105-89 is applicable, the chief judge determines, in consultation with the presiding judge of the Family Court, based on the record in the case and any unique expertise, training or knowledge of the case that the judge might have, that permitting the judge to retain the case would lead to permanent placement of the child more quickly than reassignment to a judge in the Family Court.

(3) *Standards of judicial ethics.* — The actions of a judge or magistrate judge in retaining an action or proceeding under this paragraph shall be subject to applicable standards of judicial ethics.

(c) *Training Program.* —

(1) *In general.* — The chief judge, in consultation with the presiding judge of the Family Court, shall carry out an ongoing program to provide training in family law and related matters for judges of the Family Court and other judges of the Superior Court who are assigned Family Court cases, including magistrate judges, attorneys who practice in the Family Court, and appropriate nonjudicial personnel, and shall include in the program information and instruction regarding the following:

(A) Child development.

(B) Family dynamics, including domestic violence.

(C) Relevant Federal and District of Columbia laws.

(D) Permanency planning principles and practices.

(E) Recognizing the risk factors for child abuse.

(F) Any other matters the presiding judge considers appropriate.

(2) *Use of cross-training.* — The program carried out under this section shall use the resources of lawyers and legal professionals, social workers, and experts in the field of child development and other related fields.

(d) *Accessibility of Materials, Services, and Proceedings; Promotion of “Family-Friendly” Environment.* —

(1) *In general.* — To the greatest extent practicable, the chief judge and the presiding judge of the Family Court shall ensure that the materials and services provided by the Family Court are understandable and accessible to the individuals and families served by the Family Court, and that the Family Court carries out its duties in a manner which reflects the special needs of families with children.

(2) *Location of proceedings.* — To the maximum extent feasible, safe, and practicable, cases and proceedings in the Family Court shall be conducted at locations readily accessible to the parties involved.

(e) *Integrated Computerized Case Tracking and Management System.* — The Executive Officer of the District of Columbia courts under § 11-1703 shall work with the chief judge of the Superior Court—

(1) to ensure that all records and materials of cases and proceedings in the Family Court are stored and maintained in electronic format accessible by computers for the use of judges, magistrate judges, and nonjudicial personnel of the Family Court, and for the use of other appropriate offices of the District government in accordance with the plan for integrating computer systems prepared by the Mayor of the District of Columbia under, § 4(b) [4(c) of Columbia Family Court Act of 2001 § 11-1101, note];

(2) to establish and operate an electronic tracking and management system for cases and proceedings in the Family Court for the use of judges and nonjudicial personnel of the Family Court, using the records and materials stored and maintained pursuant to paragraph (1); and

(3) to expand such system to cover all divisions of the Superior Court as soon as practicable.

(Jan. 8, 2002, 115 Stat. 2108, Pub. L. 107-114, § 4(a).)

References in text. — Section 4(b) 4(c) of 2001, referred to in paragraph (e)(1), is classified to § 11-721.

§ 11-1105. Social services and other related services.

(a) *Onsite Coordination of Services and Information.* —

(1) *In general.* — The Mayor of the District of Columbia, in consultation with the chief judge of the Superior Court, shall ensure that representatives of the appropriate offices of the District government which provide social services and other related services to individuals and families served by the Family Court (including the District of Columbia Public Schools, the District of Columbia Housing Authority, the Child and Family Services Agency, the Office of the Corporation Counsel, the Metropolitan Police Department, the Department of Health, and other offices determined by the Mayor) are available on-site at the Family Court to coordinate the provision of such services and information regarding such services to such individuals and families.

(2) *Duties of heads of offices.* — The head of each office described in paragraph (1), including the Superintendent of the District of Columbia Public Schools and the Director of the District of Columbia Housing Authority, shall

provide the Mayor with such information, assistance, and services as the Mayor may require to carry out such paragraph.

(b) *Appointment of Social Services Liaison With Family Court.* — The Mayor of the District of Columbia shall appoint an individual to serve as a liaison between the Family Court and the District government for purposes of subsection (a) and for coordinating the delivery of services provided by the District government with the activities of the Family Court and for providing information to the judges, magistrate judges, and nonjudicial personnel of the Family Court regarding the services available from the District government to the individuals and families served by the Family Court. The Mayor shall provide on an ongoing basis information to the chief judge of the Superior Court and the presiding judge of the Family Court regarding the services of the District government which are available for the individuals and families served by the Family Court.

(Jan. 8, 2002, 115 Stat. 2110, Pub. L. 107-114, § 4(a).)

§ 11-1106. Reports to Congress.

Not later than 90 days after the end of each calendar year, the chief judge of the Superior Court shall submit a report to Congress on the activities of the Family Court during the year, and shall include in the report the following:

(1) The chief judge's assessment of the productivity and success of the use of alternative dispute resolution pursuant to section 11-1102.

(2) Goals and timetables as required by the Adoption and Safe Families Act of 1997 to improve the Family Court's performance in the following year.

(3) Information on the extent to which the Family Court met deadlines and standards applicable under Federal and District of Columbia law to the review and disposition of actions and proceedings under the Family Court's jurisdiction during the year.

(4) Information on the progress made in establishing locations and appropriate space for the Family Court that are consistent with the mission of the Family Court until such time as the locations and space are established.

(5) Information on any factors which are not under the control of the Family Court which interfere with or prevent the Family Court from carrying out its responsibilities in the most effective manner possible.

(6) Information on —

(A) the number of judges serving on the Family Court as of the end of the year;

(B) how long each such judge has served on the Family Court;

(C) the number of cases retained outside the Family Court;

(D) the number of reassignments to and from the Family Court; and

(E) the ability to recruit qualified sitting judges to serve on the Family Court.

(7) Based on outcome measures derived through the use of the information stored in electronic format under section 11-1104(d), an analysis of the Family Court's efficiency and effectiveness in managing its case load during the year, including an analysis of the time required to dispose of actions and

proceedings among the various categories of the Family Court's jurisdiction, as prescribed by applicable law and best practices, including (but not limited to) best practices developed by the American Bar Association and the National Council of Juvenile and Family Court Judges.

(8) If the Family Court failed to meet the deadlines, standards, and outcome measures described in the previous paragraphs, a proposed remedial action plan to address the failure.

(Jan. 8, 2002, 115 Stat. 2111, Pub. L. 107-114, § 4(a).)

References in text. — The Adoption and Safe Families Act of 1997, referred to in par. (2), is Pub. L. 105-89, 111 Stat. 2115.

CHAPTER 12. TAX DIVISION OF THE SUPERIOR COURT.

Sec.

11-1201. Exclusive jurisdiction.

11-1202. Abolition of other remedies.

Sec.

11-1203. Rules and regulations.

§ 11-1201. Exclusive jurisdiction.

The Tax Division of the Superior Court shall be assigned exclusive jurisdiction of —

(1) all appeals from and petitions for review of assessments of tax (and civil penalties thereon) made by the District of Columbia; and

(2) all proceedings brought by the District of Columbia for this imposition of criminal penalties pursuant to the provisions of the statutes relating to taxes levied by or in behalf of the District of Columbia.

(July 29, 1970, 84 Stat. 488, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-1201. 1973 Ed., § 11-1201.

CASE NOTES

In general.

District of Columbia courts have exclusive jurisdiction over challenges to assessments and claims for refunds of District of Columbia taxes. *Jenkins v. Washington Convention Ctr.*, 236 F.3d 6, 2001 U.S. App. LEXIS 576 (C.A.D.C. 2001).

Exclusive remedy of petitioner, which was denied exemption as an institution and assessed taxes due by the District of Columbia Department of Finance and Revenue, Property Assessment Division and which then sought

review in the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act, lay in the tax division of the superior court. D.C. Code §§ 1-1508, 11-1201, 11-1202. *Washington Theater Club, Inc. v. District of Columbia Dep't of Finance & Revenue, Property Assessment Div.*, 302 A.2d 231, 1973 D.C. App. LEXIS 250 (1973), US Supreme Court certiorari denied by 414 U.S. 831, 94 S. Ct. 63, 38 L. Ed. 2d 66, 1973 U.S. LEXIS 406 (1973).

§ 11-1202. Abolition of other remedies.

Notwithstanding any other provision of law, the jurisdiction of the Tax Division of the Superior Court to review the validity and amount of all assessments of tax made by the District of Columbia is exclusive. Effective on and after the effective date of the District of Columbia Court Reorganization Act of 1970, any common-law remedy with respect to assessments of tax in the District of Columbia and any equitable action to enjoin such assessments available in a court other than the former District of Columbia Tax Court is abolished. Actions properly filed before the effective date of that Act are not affected by this section and the court in which any such action has been filed may retain jurisdiction until its disposition.

(July 29, 1970, 84 Stat. 489, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-1202.

1973 Ed., § 11-1202.

References in text. — The “effective date of the District of Columbia Court Reorganization Act of 1970,” referred to throughout this sec-

tion, means, as set forth in § 199(c) of the Act, the first day of the seventh calendar month which began after the enactment of the Act.

CASE NOTES

In general.

District of Columbia courts have exclusive jurisdiction over challenges to assessments and claims for refunds of District of Columbia taxes. *Jenkins v. Washington Convention Ctr.*, 236 F.3d 6, 2001 U.S. App. LEXIS 576 (C.A.D.C. 2001).

Where statutory period for challenging excessive tax payment had expired before sections of Court Reorganization Act putatively eliminating common-law remedies became effective, the Act could not be construed to curtail or destroy the preexisting common-law rights of property owners to maintain an action at common law for recovery from the District of Columbia. D.C. Code §§ 11-1201(1), 11-1202, 47-1593. *Block v. District of Columbia*, 492 F.2d 646, 1974 U.S. App. LEXIS 10299 (C.A.D.C. 1974).

The Court Reorganization Act was not intended to deprive taxpayers of their previously acquired right to maintain action at common law for recovery of unincorporated franchise taxes paid under protest to the District of Columbia. D.C. Code § 11-101 et seq. *Block v. District of Columbia*, 492 F.2d 646, 1974 U.S. App. LEXIS 10299 (C.A.D.C. 1974).

Federal district court was precluded from exercising jurisdiction over action brought by members of unincorporated businesses (UB) seeking declaratory judgment that imposition of District of Columbia's UB franchise tax on them, as non-resident members of a UB, was

unlawful under the federal Constitution and District of Columbia's Home Rule Act; District of Columbia's jurisdiction granting code provisions vested its Superior Court with exclusive jurisdiction regarding review of the validity or amount of District of Columbia tax assessments, including federal and constitutional issues, and, while business members argued they were challenging the imposition of a tax, rather than the assessment, the common legal definition of "assessment" included imposition of a tax, and the members had to be challenging their actual tax liability as assessed in order to have standing. *Fernebok v. District of Columbia*, 534 F.Supp.2d 25, 2008 U.S. Dist. LEXIS 5069 (2008), affirmed by 2008 U.S. App. LEXIS 13611 (D.C. Cir. June 24, 2008).

Exclusive remedy of petitioner, which was denied exemption as an institution and assessed taxes due by the District of Columbia Department of Finance and Revenue, Property Assessment Division and which then sought review in the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act, lay in the tax division of the superior court. D.C. Code §§ 1-1508, 11-1201, 11-1202. *Washington Theater Club, Inc. v. District of Columbia Dep't of Finance & Revenue, Property Assessment Div.*, 302 A.2d 231, 1973 D.C. App. LEXIS 250 (1973), US Supreme Court certiorari denied by 414 U.S. 831, 94 S. Ct. 63, 38 L. Ed. 2d 66, 1973 U.S. LEXIS 406 (1973).

§ 11-1203. Rules and regulations.

The Superior Court may make such rules and regulations for conducting business in the Tax Division, consistent with the statutes applicable to such business and with the Superior Court's general rules of practice and procedure, as it may deem necessary and proper. Rules and regulations for the Tax Division shall, insofar as possible, assure the prompt disposition of matters before the Tax Division to the end that the taxing statutes of the District of Columbia shall be fairly and efficiently enforced.

(July 29, 1970, 84 Stat. 489, Pub. L. 91-358, title I, § 111.)

Cross references. — Rules of Superior Court, see § 11-946.

Superior Court, small claims and conciliation procedures, applicability of other laws, see § 16-3901.

Prior Codifications. — 1981 Ed., § 11-1203.

1973 Ed., § 11-1203.

CHAPTER 13. SMALL CLAIMS AND CONCILIATION BRANCH OF THE SUPERIOR COURT.

Subchapter I. Continuation and Sessions

Sec.

11-1301. Continuation of Branch.

11-1302. Sessions.

Sec.

11-1322. Arbitration and conciliation.

11-1323. Certification of cases by Superior Court judges; recertification; certification by Branch.

Subchapter II. Jurisdiction and Procedures

11-1321. Exclusive jurisdiction of small claims.

Subchapter I. Continuation and Sessions.

§ 11-1301. Continuation of Branch.

The Small Claims and Conciliation Branch shall continue as a branch of the Civil Division in the Superior Court.

(July 29, 1970, 84 Stat. 489, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-1301. 1973 Ed., § 11-1301.

§ 11-1302. Sessions.

The Small Claims and Conciliation Branch, with a judge in attendance, shall be open for the transaction of business on every day of the year except Saturday afternoons, Sundays, and legal holidays, and shall hold at least one evening session during each week.

(July 29, 1970, 84 Stat. 489, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-1302. 1973 Ed., § 11-1302.

Subchapter II. Jurisdiction and Procedures.

§ 11-1321. Exclusive jurisdiction of small claims.

The Small Claims and Conciliation Branch has exclusive jurisdiction of any action within the jurisdiction of the Superior Court which is only for the recovery of money, if the amount in controversy does not exceed \$5,000, exclusive of interest, attorney fees, protest fees, and costs. An action which affects an interest in real property may not be brought in the Branch. If a counterclaim, cross claim, or any other claim or any defense, affecting an interest in real property, is made in an action brought in the Branch, the action shall be certified to the Civil Division.

(July 29, 1970, 84 Stat. 489, Pub. L. 91-358, title I, § 111; Oct. 30, 1984, 98 Stat. 3142, Pub. L. 98-598, § 4; Aug. 23, 1994, 108 Stat. 1564, Pub. L. 103-303, § 2(a).)

Cross references. — Rules of court applicable in Small Claims and Conciliation Branch, see § 16-3901.

Set-off or counterclaim, small claims court jurisdiction, see § 16-3904.

Section references. — This section is referred to in §§ 11-1323 and 16-3904.

Prior Codifications. — 1981 Ed., § 11-1321.

1973 Ed., § 11-1321.

CASE NOTES

In general.

\$2,000 jurisdictional limitation for small claims court does not apply to setoffs and counterclaims under D.C. Code 1981 §§ 11-1321, 16-3904. *McCray v. McGee*, 504 A.2d 1128, 1986 D.C. App. LEXIS 289 (1986).

Small claims court did not have jurisdiction to entertain cross claim in excess of \$2,000, under D.C. Code 1981 §§ 11-1321, 16-3904, notwithstanding fact that jurisdictional limitation did not apply to setoffs and counterclaims. *McCray v. McGee*, 504 A.2d 1128, 1986 D.C. App. LEXIS 289 (1986).

Amount in controversy was within \$750 jurisdictional limitation for small claims and conciliation branch, where complaint alleged damages in sum of \$750 and, in reaching \$728.05 amount awarded to tenants, trial court de-

ducted from \$875 security deposit the \$146.95 properly withheld by landlord. (Per MACK, J., with one Judge concurring in result only.) D.C. Code 1973, § 11-1321. *Weinstein v. Calabrese*, 439 A.2d 1091, 1981 D.C. App. LEXIS 406 (1981).

In action by tenant against landlord for value of sewing machine held by landlord as security for personal debt, landlord's counterclaim for unpaid rent, for value of time lost from business, and for personal debt was within exclusive jurisdiction of small claims court, since original claim was for \$750, the small claims court jurisdictional limit and counterclaim requested only recovery of money and there was no contest for possession of leased premises. D.C. Code § 11-1321. *Bogans v. Jeffers*, 430 A.2d 518, 1981 D.C. App. LEXIS 273 (1981).

§ 11-1322. Arbitration and conciliation.

In order to effect the speedy settlement of controversies, and with the consent of the parties thereto, the Small Claims and Conciliation Branch may settle cases, irrespective of the amount involved, by the methods of arbitration and conciliation. A judge sitting in the Branch may act as a referee or arbitrator, either alone or in conjunction with other persons, as provided by rule of the court. A judge, officer, or employee of the Superior Court may not accept any fee or compensation in addition to that person's salary for services performed pursuant to this section.

(July 29, 1970, 84 Stat. 490, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(17), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-1322.

1973 Ed., § 11-1322.

CASE NOTES

In general.

Conciliation efforts in small claims branch are mandatory, and settlements are strongly favored. D.C. Code 1973, §§ 11-1322, 16-

3906(a); Small Claims Conciliation Rules 1-4. *Leiken v. Wilson*, 445 A.2d 993, 1982 D.C. App. LEXIS 365 (1982).

§ 11-1323. Certification of cases by Superior Court judges; recertification; certification by Branch.

(a) When the interests of justice seem to require and all parties consent thereto, a judge of the Superior Court may certify a case to the Small Claims

and Conciliation Branch for conciliation or to obtain a complete or partial agreed statement of facts or stipulation, which will simplify and expedite the ultimate trial of the case. With the consent of all parties, the trial of the case may be completed in the Branch. In the absence of consent, the case shall be recertified to another judge of the Civil Division for trial.

(b) When the interests of justice seem to require, the Branch may certify to the Civil Division any action brought in the Branch under section 11-1321.

(July 29, 1970, 84 Stat. 490, Pub. L. 91-358, title I, § 111.)

Cross references. — District of Columbia Court of Appeals, judges, service and compensation, see § 11-703.

Superior Court of the District of Columbia, judges, service and compensation, see § 11-904.

Prior Codifications. — 1981 Ed., § 11-1323.

1973 Ed., § 11-1323.

CHAPTER 15. JUDGES OF THE DISTRICT OF COLUMBIA COURTS.

*Subchapter I. Appointment; Qualifications;
Service of Judges*

- Sec.
11-1501. Appointment and qualifications of judges.
11-1502. Tenure.
11-1503. Designation of Chief Judge.
11-1504. Services of retired judges.
11-1505. Vacations.

*Subchapter II. The District of Columbia
Commission on Judicial Disabilities
and Tenure*

- 11-1521. Establishment of Commission.
11-1522. Membership.
11-1523. Terms of office; vacancy; continuation of service by a member.
11-1524. Compensation.
11-1525. Operations; personnel; administrative services.
11-1526. Removal; involuntary retirement; proceedings.
11-1527. Procedures.
11-1528. Privilege; confidentiality.
11-1529. Judicial review.
11-1530. Financial statements.

Subchapter III. Retirement

- Sec.
11-1561. Definitions.
11-1562. Eligibility for retirement.
11-1563. Withholding of retirement payments; lump-sum credit.
11-1564. Computation of retirement salary; election to credit other service.
11-1565. Service by retired judges.
11-1566. Survivor annuity; election; relinquishment.
11-1567. Survivor annuity; payments to fund.
11-1568. Survivor annuity; entitlement; computation.
11-1568.01. Opportunity to revoke a previous survivor annuity election.
11-1568.02. Additional opportunity to make a survivor annuity election.
11-1568.03. Period for exercise of right to revoke or elect.
11-1569. Survivor annuity; payment; order of precedence.
11-1570. The District of Columbia Judicial Retirement and Survivors Annuity Fund.
11-1571. Periodic increases; existing rights.
11-1572. Regulations; effect on Reform Act.

Subchapter I. Appointment; Qualifications; Service of Judges.

§ 11-1501. Appointment and qualifications of judges.

(a) The President of the United States shall nominate, and by and with the advice and consent of the Senate, shall appoint all judges of the District of Columbia courts. The President shall have power to fill all vacancies that may occur in those courts during a recess of the Senate, by granting commissions which shall expire at the end of the next session of the Senate.

(b) A person may not be appointed a judge of a District of Columbia court unless that person —

(1) is a citizen of the United States;

(2)(A) is a member of the bar of the District of Columbia and (B) (i) has been a member of such bar for a period of at least five years, or (ii) in the case of a professor of law in a law school in the District of Columbia or of an attorney employed in the District of Columbia by the United States or the District of Columbia, has been eligible for membership in the bar of the District of Columbia for at least five years prior to appointment;

(3) has been actively engaged, for at least five of the ten years immediately prior to appointment, as an attorney in the practice of law in the District of Columbia, as a judge of a District of Columbia court, as a professor of law in a law school in the District of Columbia, or as an attorney employed in the District of Columbia by the United States or the District of Columbia; and

(4) is a bona fide resident of the area consisting of the District of

Columbia, Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties (and any cities within the outer boundaries thereof) and the city of Alexandria in Virginia and has maintained an actual place of abode in such area for at least five years prior to appointment.

During term of service and for one year after the termination thereof, no member of the District of Columbia Commission on Judicial Disabilities and Tenure shall be eligible for nomination or appointment to a District of Columbia court.

(July 29, 1970, 84 Stat. 491, Pub. L. 91-358, title I, § 111; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 2(a)(4); June 13, 1994, Pub. L. 103-266, §§ 1(b)(18), (19), 108 Stat. 713.)

Cross references. — District Charter provisions relating to District of Columbia Judicial Nomination Commission, see § 1-204.34.

District Charter provisions relating to nomination and appointment of judges, see § 1-204.33.

Prior Codifications. — 1981 Ed., § 11-1501.

1973 Ed., § 11-1501.

Editor's notes. — Vacancies in certain District courts on July 29, 1970: Section 195(c) of Pub. L. 91-358 provided for the qualifications and 15-year term of office of any judge appointed to fill any vacancy which existed on July 29, 1970, in the District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, or the Juvenile Court of the District of Columbia.

Supersedure of section: The provisions of this section have been superseded by § 433 of the District Charter (See the Appendix to Title II).

Appointment of additional judges to Court of

Appeals: Section 195(a)(1) of Pub. L. 91-358 provided for the appointment of 3 additional judges to the District of Columbia Court of Appeals, by the President of the United States and with the advice and consent of the Senate, to serve a term of 15 years.

Appointment of additional judges to Court of General Sessions: Section 195(a)(2) of Pub. L. 91-358 provided for the appointment of 10 additional judges to the District of Columbia Court of General Sessions, by the President of the United States and with the advice and consent of the Senate, to serve a term of 15 years.

Appointment of Executive Officer: Section 195(b) of Pub. L. 91-358 provided for the appointment, and compensation, and removal of the Executive Officer of the District of Columbia courts.

Termination of Federal Disclosure Requirements: See Pub. L. 99-573, § 6.

§ 11-1502. Tenure.

Subject to mandatory retirement at age 74 and to the provisions of subchapters II and III of this chapter, a judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 shall serve for a term of fifteen years, and upon completion of such term, such judge shall continue to serve until the judge's successor is appointed and qualifies.

(July 29, 1970, 84 Stat. 491, Pub. L. 91-358, title I, § 111; Mar. 19, 1984, 98 Stat. 65, Pub. L. 98-235; June 13, 1994, Pub. L. 103-266, § 1(b)(20), 108 Stat. 713.)

Cross references. — District Charter provisions relating to tenure of judges, see § 1-204.31.

Eligibility for retirement after ten years of service, see § 11-1562.

Section references. — This section is referred to in § 11-1562.

Prior Codifications. — 1981 Ed., § 11-1502.

1973 Ed., § 11-1502.

References in text. — The date of enactment of the District of Columbia Court Reorganization Act of 1970, referred to in this section, is July 29, 1970.

§ 11-1503. Designation of Chief Judge.

(a) The chief judge of a District of Columbia court shall be designated by the President of the United States from among the judges of the court in regular active service, and shall serve for a term of four years or until a successor is designated. The chief judge shall be eligible for redesignation. The chief judge may relinquish that position, after giving notice to the President.

(b) If a chief judge is not redesignated, or relinquishes the office of chief judge, that person shall continue as an associate judge.

(July 29, 1970, 84 Stat. 491, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(21), (22), 108 Stat. 713.)

Cross references. — District Charter provisions relating to designation of chief judge of a District of Columbia court, see § 1-204.31.

Prior Codifications. — 1981 Ed., § 11-1503.
1973 Ed., § 11-1503.

§ 11-1504. Services of retired judges.

(a)(1) A judge, retired for reasons other than disability, who has been favorably recommended and appointed as a senior judge, in accordance with subsection (b), may perform such judicial duties as such senior judge is assigned and willing and able to undertake. A senior judge shall be subject to reappointment every four years, unless the Senior Judge has reached his or her seventy-fourth birthday, whereupon review shall be at least every two years, in accordance with subsection (b). Except as provided under this section, retired judges may not perform judicial duties in District of Columbia courts.

(2) At any time prior to or not later than one year after retirement, a judge may request recommendation from the District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter in this section referred to as the “Commission”) to be appointed as a senior judge in accordance with this section; except that any retired judge shall have not less than 180 days from the effective date of this Act to file a request for an initial recommendation from the Commission.

(b)(1) A retired judge willing to perform judicial duties may request a recommendation as a senior judge from the Commission. Such judge shall submit to the Commission such information as the Commission considers necessary to a recommendation under this subsection.

(2) The Commission shall submit a written report of its recommendations and findings to the appropriate chief judge and the judge requesting appointment within 180 days of the date of the request for recommendation. The Commission, under such criteria as it considers appropriate, shall make a favorable or unfavorable recommendation to the appropriate chief judge regarding an appointment as senior judge. The recommendation of the Commission shall be final.

(3) The appropriate chief judge shall notify the Commission and the judge requesting appointment of such chief judge’s decision regarding appointment within 30 days after receipt of the Commission’s recommendation and findings. The decision of such chief judge regarding such appointment shall be final.

(c) A judge may continue to perform judicial duties upon retirement, without appointment as a senior judge, until such judge's successor assumes office.

(d) A retired judge, actively performing judicial duties as of the date of enactment of the District of Columbia Retired Judge Service Act, may continue to perform such judicial duties as he or she may be willing and able to assume, subject to the approval of the appropriate chief judge, for a period not to exceed one year from the date of enactment of such Act, without appointment as a senior judge.

(July 29, 1970, 84 Stat. 491, Pub. L. 91-358, title I, § 111; Oct. 30, 1984, 98 Stat. 3142, Pub. L. 98-598, § 2(a); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, §§ 14(a), (b).)

Prior Codifications. — 1981 Ed., § 11-1504.

1973 Ed., § 11-1504.

References in text. — “The effective date of this Act,” referred to in subsection (a)(2), is October 28, 1986.

The “District of Columbia Retired Judge Service Act,” referred to in subsection (d), is Public Law 98-598.

§ 11-1505. Vacations.

(a) Each judge of the District of Columbia courts shall be entitled to an annual vacation of not more than 30 calendar days. Such vacation shall be taken at such time or times as prescribed by the chief judge of the District of Columbia Court of Appeals for judges of that court and by the chief judge of the Superior Court for judges of that court. Time spent by a judge as a member of any conference, committee, or commission established by law shall not be deducted from the judge's vacation period.

(b) In determining when a judge shall take a vacation, and the length thereof, the chief judge exercising authority under this section shall be mindful of the necessity of retaining sufficient judicial personnel in the court under the chief judge's supervision to permit at all times the prompt and effective disposition of the business of such court.

(July 29, 1970, 84 Stat. 492, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(23), (24), 108 Stat. 713.)

Cross references. — D.C. retirement funds, transition from District of Columbia Administration, see § 1-819.01.

Judges, tenure, see § 11-1502.

Prior Codifications. — 1981 Ed., § 11-1505.

1973 Ed., § 11-1505.

Subchapter II. The District of Columbia Commission on Judicial Disabilities and Tenure.

§ 11-1521. Establishment of Commission.

There shall be a District of Columbia Commission on Judicial Disabilities and Tenure (hereafter in this subchapter referred to as the “Commission”). The

Commission shall have power to suspend, retire, or remove a judge of a District of Columbia court, as provided in this subchapter.

(July 29, 1970, 84 Stat. 492, Pub. L. 91-358, title I, § 111.)

Cross references. — Continuation of Commission, see § 1-207.18.

District Charter provisions relating to establishment of Commission, and its power to remove, suspend, or retire judges, see §§ 1-204.31 and 1-204.32.

Prior Codifications. — 1981 Ed., § 11-1521.

1973 Ed., § 11-1521.

CASE NOTES

Validity.

The Court Reorganization Act creating the District of Columbia Commission on Judicial Disabilities and Tenure and the provisions of the Home Rule Act giving the Commission duties and powers with respect to reappointment of judges whose terms are about to expire do not encroach on judicial independence in violation of the doctrine of separation of powers, even assuming that doctrine applies with the same force to the governmental structure of

the District of Columbia as it does to the federal government. D.C. Code §§ 11-101 et seq., 11-901, 11-1502, 11-1521, 11-1526(a)(2)(C), 11-1529; U.S. Const. art. 3, § 1 et seq.; District of Columbia Self-Government and Governmental Reorganization Act, § 101 et seq., D.C. Code preceding section 1-101; §§ 432, 433(c), D.C. Code Tit. 11 Appendix; U.S. Const. art. 1, § 8, cl. 17. *Halleck v. Berliner*, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

§ 11-1522. Membership.

(a) The Commission shall consist of five members appointed as follows:

(1) The President of the United States shall appoint three members of the Commission. Of the members appointed by the President —

(A) at least one member must be a member of the District of Columbia bar who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years immediately before appointment; and

(B) at least two members must be residents of the District of Columbia.

(2) The Commissioner [Mayor] of the District of Columbia shall appoint one member of the Commission. The member appointed by the Commissioner [Mayor] must be a resident of the District of Columbia and not an attorney.

(3) The chief judge of the United States District Court for the District of Columbia shall appoint one member of the Commission. The member appointed by the chief judge shall be an active or retired Federal judge serving in the District of Columbia.

The President shall designate as Chair of the Commission one of the members appointed pursuant to paragraph (1) who is a member of the District of Columbia bar who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years before the member's appointment.

(b) There shall be three alternate members of the Commission, who shall serve as members pursuant to rules adopted by the Commission. The alternate members shall be appointed as follows:

(1) The President shall appoint one alternate member, who shall be a resident of the District of Columbia and a member of the bar of the District of

Columbia who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years immediately before appointment.

(2) The Commissioner [Mayor] shall appoint one alternate member who shall be a resident of the District of Columbia and not an attorney.

(3) The chief judge of the United States District Court for the District of Columbia shall appoint one alternate member who shall be an active or retired Federal judge serving in the District of Columbia.

(c) No member or alternate member of the Commission shall be a member, officer, or employee of the legislative branch or of an executive or military department of the United States Government (listed in section 101 or 102 of title 5, United States Code); and no member or alternate member (other than a member or alternate member appointed by the chief judge of the United States District Court for the District of Columbia) shall be an officer or employee of the judicial branch of the United States Government. No member or alternate member of the Commission shall be an officer or employee of the District of Columbia government (including its judicial branch).

(July 29, 1970, 84 Stat. 492, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(25)-(27), 108 Stat. 713.)

Cross references. — District Charter provisions relating to Commission membership, see § 1-204.31.

Prior Codifications. — 1981 Ed., § 11-1522.

1973 Ed., § 11-1522.

Change in Government. — This section originated at a time when local government powers were delegated at the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1523. Terms of office; vacancy; continuation of service by a member.

(a)(1) Except as provided in paragraph (2), the term of office of members and alternate members of the Commission shall be six years.

(2) Of the members and alternate members first appointed to the Commission —

(A) one member and alternate member appointed by the President shall be appointed for a term of six years, one member appointed by the President shall be appointed for a term of four years, and one such member shall be appointed for a term of two years, as designated by the President at the time of appointment;

(B) the member and alternate member appointed by the chief judge of the United States District Court for the District of Columbia shall be appointed for a term of four years; and

(C) the member and alternate member appointed by the Commissioner [Mayor] of the District of Columbia shall be appointed for a term of two years.

(b) A member or alternate member appointed to fill a vacancy occurring

before the expiration of the term of that member's predecessor shall serve only for the remainder of that term. Any vacancy on the Commission shall be filled in the same manner as the original appointment was made.

(c) If approved by the Commission, a member may serve after the expiration of that member's term for purposes of participating until conclusion in a matter, relating to the suspension, retirement, or removal of a judge, begun before the expiration of that member's term. A member's successor may be appointed without regard to the member's continuation in service, but that member's successor may not participate in the matter for which the member's continuation in service was approved.

(July 29, 1970, 84 Stat. 493, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(28), (29), 108 Stat. 713.)

Cross references. — District Charter provisions relating to terms of office and vacancies on Commission, see § 1-204.31.

Prior Codifications. — 1981 Ed., § 11-1523.

1973 Ed., § 11-1523.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1524. Compensation.

Members of the Tenure Commission shall serve without compensation for services rendered in connection with their official duties on the Commission.

(July 29, 1970, 84 Stat. 493, Pub. L. 91-358, title I, § 111; Apr. 26, 1996, 110 Stat. 210, Pub. L. 104-134, § 133(a).)

Cross references. — District Charter provisions relating to compensation, see § 1-204.31.

Prior Codifications. — 1981 Ed., § 11-1524.

1973 Ed., § 11-1524.

§ 11-1525. Operations; personnel; administrative services.

(a) The Commission may make such rules and regulations for its operations as it may deem necessary, and such rules and regulations shall be effective on the date specified by the Commission. The District of Columbia Administrative Procedure Act (D.C. Official Code, secs. 2-501 to 2-510) shall be applicable to the Commission only as provided by this subsection. For the purposes of the publication of rules and regulations, judicial notice, and the filing and compilation of rules, sections 5, 7, and 8 of that Act (D.C. Official Code, secs. 2-504, 2-505, and 2-507), insofar as consistent with this subchapter, shall be applicable to the Commission; and for purposes of those sections, the Commission shall be deemed an independent agency as defined in section 3(5) of that Act (D.C. Official Code, sec. 2-502). Nothing contained herein shall be con-

strued to require prior public notice and hearings on the subject of rules adopted by the Commission.

(b) The Commission is authorized, without regard to the provisions governing appointment and classification of District of Columbia employees, to appoint and fix the compensation of, or to contract for, such officers, assistants, reporters, counsel, and other persons as may be necessary for the performance of its duties. It is authorized to obtain the services of medical and other experts in accordance with the provisions of section 3109 of title 5, United States Code, but at rates not to exceed the daily equivalent of the rate provided for GS-18 of the General Schedule.

(c) The District of Columbia is authorized to detail, on a reimbursable basis, any of its personnel to assist in carrying out the duties of the Commission.

(d) Financial and administrative services (including those related to budgeting and accounting, financial reporting, personnel, and procurement) shall be provided to the Commission by the District of Columbia, for which payment shall be made in advance, or by reimbursement, from funds of the Commission in such amounts as may be agreed upon by the Chair of the Commission and the District of Columbia government. Regulations of the District of Columbia for the administrative control of funds shall apply to funds appropriated to the Commission.

(July 29, 1970, 84 Stat. 493, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(30), 108 Stat. 713.)

Cross references. — District Charter provisions relating to rules and regulations of Commission, see § 1-204.31.

Prior Codifications. — 1981 Ed., § 11-1525.

1973 Ed., § 11-1525.

References in text. — The General Schedule, referred to at the end of the last sentence of subsection (b) of this section, appears in 5 U.S.C. § 5332.

§ 11-1526. Removal; involuntary retirement; proceedings.

(a)(1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District of Columbia.

(2) A judge of a District of Columbia court shall also be removed from office upon affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Commission (or upon expiration of the time within which such an appeal may be taken) after a determination by the Commission of —

(A) willful misconduct in office,

(B) willful and persistent failure to perform judicial duties, or

(C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is

likely to become permanent and which prevents, or seriously interferes with, the proper performance of the judge's judicial duties, and (2) the Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c)(1) A judge of a District of Columbia court shall be suspended, without salary —

(A) upon —

(i) proof of conviction of a crime referred to in subsection (a)(1) which has not become final, or

(ii) the filing of an order of removal under subsection (a)(2) which has not become final; and

(B) upon the filing by the Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover salary and all rights and privileges pertaining to the judge's office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as the judge may be entitled to pursuant to subchapter III of this chapter, upon the filing by the Commission of an order of involuntary retirement under subsection (b) in the District of Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover the judge's judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of office.

(3) A judge of a District of Columbia court shall be suspended from all or part of judicial duties, with salary, if the Commission, upon the concurrence of three members, (A) orders a hearing for the removal or retirement of the judge pursuant to this subchapter and determines that suspension is in the interest of the administration of justice, and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Commission) but in no event later than the termination of all appeals.

(July 29, 1970, 84 Stat. 494, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(31)-(35), 108 Stat. 713.)

Cross references. — District Charter provisions relating to removal, suspension, and involuntary retirement of judges, see § 1-204.32.

Section references. — This section is re-

ferred to in §§ 11-1527, 11-1529, 11-1562, and 11-1564.

Prior Codifications. — 1981 Ed., § 11-1526.

1973 Ed., § 11-1526.

CASE NOTES

ANALYSIS

Due process.

Grounds for removal.

Judge's constitutional rights.

Separation of powers.

Validity.

Due process.

Even though members of the District of Co-

lumbia Commission on Judicial Disabilities and Tenure may themselves be involved in some parts of the investigation and prosecution, as well as being solely responsible for the adjudication in judicial disciplinary proceedings, such combination of functions does not violate due process. *Halleck v. Berliner*, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

Grounds for removal.

Before the District of Columbia Commission on Judicial Disabilities and Tenure may impose any sanction on a judge, it must determine that the judge has engaged in conduct which falls within one of the statutory grounds for removal, and under present statutory provisions, it should not institute any disciplinary investigation or proceeding unless it believes that the alleged conduct, if proved, may warrant removal from office on the grounds set out in the statute. D.C. Code §§ 11-1526(a), (a)(1, 2), 11-1529(d)(3). *Halleck v. Berliner*, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

Where the District of Columbia Commission on Judicial Disabilities and Tenure concludes that judge should not be removed from office, it may call judge before it and warn him in camera that a similar offense in the future may warrant removal and, subject to limitations in the instant case, the Commission may in its discretion make public the fact that it has determined that although grounds for removal exist, removal will not be ordered, and the reasons for that determination. D.C. Code §§ 11-1526, 11-1526(a)(2), 11-1528(b). *Halleck v. Berliner*, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

Judge's constitutional rights.

In disciplinary proceeding concerning a judge, judge's First Amendment right to freedom of speech is not violated by consideration of statements he has made from the bench or

otherwise in connection with his judicial duties. U.S. Const. Amend. 1. *Halleck v. Berliner*, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

In disciplinary proceedings before the District of Columbia Commission on Judicial Disabilities and Tenure, consideration of alleged representations, if any, made by judge in prior proceedings before the Commission in evaluating his candidacy for reappointment would not violate judge's constitutional rights. District of Columbia Self-Government and Governmental Reorganization Act, § 433(c), D.C. Code Tit. 11 Appendix; D.C. Code § 11-1526(a)(2)(C). *Halleck v. Berliner*, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

Separation of powers.

Even assuming doctrine of separation of powers is fully applicable to the governmental structure of the District of Columbia, doctrine is not violated in judicial disciplinary proceedings either on ground that disciplinary functions of the Commission on Judicial Disabilities and Tenure represent an unconstitutional encroachment upon the independence of the judiciary of the District, or by reason of actions of members of the office of the United States Attorney in instigating or furnishing information in connection with the Commission's investigation. D.C. Code §§ 11-1526, 11-1529. *Halleck v. Berliner*, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

Validity.

District of Columbia statute specifying as a ground for removal of judge "any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute" is supplemented by the Code of Judicial Conduct, and as so supplemented is not unconstitutionally vague or overbroad in violation of due process. D.C. Code § 11-1526(a)(2)(C). *Halleck v. Berliner*, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

§ 11-1527. Procedures.

(a)(1) On its own initiative, or upon complaint or report of any person, formal or informal, the Commission may undertake an investigation of the conduct or health of any judge. After such investigation as it deems adequate, the Commission may terminate the investigation or it may order a hearing concerning the health or conduct of the judge. No order affecting the tenure of a judge based on grounds for removal set forth in section 11-1526(a)(2) or 11-1530(b)(3) shall be made except after a hearing as provided by this subchapter. Nothing in this subchapter shall preclude any informal contacts with the judge, or the chief judge of the court in which the judge serves, by the Commission, whether before or after a hearing is ordered, to discuss any matter related to its investigation.

(2) A judge whose conduct or health is to be the subject of a hearing by the

Commission shall be given notice of such hearing and of the nature of the matters under inquiry not less than thirty days before the date on which the hearing is to be held. The judge shall be admitted to such hearing and to every subsequent hearing regarding the judge's conduct or health. The judge may be represented by counsel, offer evidence in his or her own behalf, and confront and cross-examine witnesses against the judge.

(3) Within ninety days after the adjournment of hearings, the Commission shall make findings of fact and a determination regarding the conduct or health of a judge who was the subject of the hearing. The concurrence of at least four members shall be required for a determination of grounds for removal or retirement. Upon a determination of grounds for removal or retirement, the Commission shall file an appropriate order pursuant to subsection (a) or (b) of section 11-1526. On or before the date the order is filed, the Commission shall notify the judge, the chief judge of the court in which the judge serves, and the President of the United States.

(b) The Commission shall keep a record of any hearing on the conduct or health of a judge and one copy of such record shall be provided to the judge at the expense of the Commission.

(c)(1) In the conduct of investigations and hearings under this section the Commission may administer oaths, order and otherwise provide for the inspection of books and records, and issue subpoenas [subpoenas] for attendance of witnesses and the production of papers, books, accounts, documents, and testimony relevant to any such investigation or hearing. It may order a judge whose health is in issue to submit to a medical examination by a duly licensed physician designated by the Commission.

(2) Whenever a witness before the Commission refuses, on the basis of the witness's privilege against self-incrimination, to testify or produce books, papers, documents, records, recordings, or other materials, and the Commission determines that the testimony or production of evidence is necessary to the conduct of its proceedings, it may order the witness to testify or produce the evidence. The Commission may issue the order no earlier than ten days after the day on which it served the Attorney General with notice of its intention to issue the order. The witness may not refuse to comply with the order on the basis of the witness's privilege against self-incrimination, but no testimony or other information compelled under the order (or any information directly or indirectly derived from the testimony or production of evidence) may be used against the witness in any criminal case, nor may it be used as a basis for subjecting the witness to any penalty or forfeiture contrary to constitutional right or privilege. No witness shall be exempt under this subsection from prosecution for perjury committed while giving testimony or producing evidence under compulsion as provided in this subsection.

(3) If any person refuses to attend, testify, or produce any writing or things required by a subpoena [subpoena] issued by the Commission, the Commission may petition the United States district court for the district in which the person may be found for an order compelling that person to attend and testify or produce the writings or things required by subpoena [subpoena]. The court shall order the person to appear before it at a specified time and

place and then and there shall consider why that person has not attended, testified, or produced writings or things as required. A copy of the order shall be served upon that person. If it appears to the court that the subpoena [subpoena] was regularly issued, the court shall order the person to appear before the Commission at the time or place fixed in the order and to testify or produce the required writings or things. Failure to obey the order shall be punishable as contempt of court.

(4) In pending investigations or proceedings before it, the Commission may order the deposition of any person to be taken in such form and subject to such limitation as may be prescribed in the order. The Commission may file in the Superior Court a petition, stating generally, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and directions, if any, of the Commission requesting an order requiring the person to appear and testify before a designated officer. Upon the filing of the petition the Superior Court may order the person to appear and testify. A subpoena [subpoena] for such deposition shall be issued by the clerk of the Superior Court and the deposition shall be taken and returned in the manner prescribed by law for civil actions.

(d) It shall be the duty of the United States marshals upon the request of the Commission to serve process and to execute all lawful orders of the Commission.

(e) Each witness, other than an officer or employee of the United States or the District of Columbia, shall receive for attendance the same fees, and all witnesses shall receive the allowances, prescribed by section 15-714 for witnesses in civil cases. The amount shall be paid by the Commission from funds appropriated to it.

(July 29, 1970, 84 Stat. 495, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(36)-(41), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-1527.
1973 Ed., § 11-1527.

Editor's notes. — Throughout subsection (c), "subpoena" and "subpoenas" were inserted, in brackets, to correct misspellings.

CASE NOTES

Due process.

Judge was entitled to due process safeguards during disciplinary proceedings greater than the process to which he was entitled in connection with evaluation of his candidacy for reappointment. D.C. Code § 11-1527. *Halleck v. Berliner*, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

§ 11-1528. Privilege; confidentiality.

(a)(1) Subject to paragraph (2), the filing of papers with, and the giving of testimony before, the Commission shall be privileged. Subject to paragraph (2), hearings before the Commission, the record thereof, and materials and papers filed in connection with such hearings shall be confidential.

(2)(A) The judge whose conduct or health is the subject of any proceedings under this chapter may disclose or authorize the disclosure of any information under paragraph (1).

(B) With respect to a prosecution of a witness for perjury or on review of a decision of the Commission, the record of hearings before the Commission and all papers filed in connection with such hearing shall be disclosed to the extent required for such prosecution or review.

(C) Upon request, the Commission shall disclose, on a privileged and confidential basis, to the District of Columbia Judicial Nomination Commission any information under paragraph (1) concerning any judge being considered by such nomination commission for elevation to the District of Columbia Court of Appeals or for chief judge of a District of Columbia court.

(b) If the Commission determines that no grounds for removal or involuntary retirement exist it shall notify the judge and inquire whether the judge desires the Commission to make available to the public information pertaining to the nature of its investigation, its hearings, findings, determinations, or any other fact related to its proceedings regarding the judge's health or conduct. Upon receipt of such request in writing from the judge, the Commission shall make such information available to the public.

(July 29, 1970, 84 Stat. 497, Pub. L. 91-358, title I, § 111; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 11; June 13, 1994, Pub. L. 103-266, § 1(b)(42), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-1528. 1973 Ed., § 11-1528.

CASE NOTES

In general.

Rule of the District of Columbia Commission on Judicial Disabilities and Tenure requiring that every witness in every investigation or other proceeding under the rules shall swear or affirm not to disclose the existence of the proceeding or the identity of the judge involved, being framed in terms of "witnesses," does not require special counsel to require everyone with whom he has contact in looking into a complaint to make a formal oath or affirmation. D.C. Code§ 11-1528(a). *Halleck v. Berliner*, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

Where the District of Columbia Commission on Judicial Disabilities and Tenure concludes that judge should not be removed from office, it may call judge before it and warn him in camera that a similar offense in the future may warrant removal and, subject to limitations in the instant case, the Commission may in its discretion make public the fact that it has determined that although grounds for removal exist, removal will not be ordered, and the reasons for that determination. D.C. Code §§ 11-1526, 11-1526(a)(2), 11-1528(b). *Halleck v. Berliner*, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

§ 11-1529. Judicial review.

(a) A judge aggrieved by an order of removal or retirement filed by the Commission pursuant to subsection (a) or (b) of section 11-1526 may seek judicial review thereof by filing notice of appeal with the Chief Justice of the United States. Notice of appeal shall be filed within 30 days of the filing of the order of the Commission in the District of Columbia Court of Appeals.

(b) Upon receipt of notice of appeal from an order of the Commission, the Chief Justice shall convene a special court consisting of three Federal judges designated from among active or retired judges of the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia.

(c) The special court shall review the order of the Commission appealed from and, to the extent necessary to decision and when presented, shall decide all relevant questions of law and interpret constitutional and statutory provisions. Within 90 days after oral argument or submission on the briefs if oral argument is waived, the special court shall affirm or reverse the order of the Commission or remand the matter to the Commission for further proceedings.

(d) The special court shall hold unlawful and set aside a Commission order or determination found to be —

- (1) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial evidence.

In making the foregoing determinations, the special court shall review the whole record or those parts of it cited by the judge or the Commission, and shall take due account of the rule of prejudicial error.

(e) As appropriate and to the extent consistent with this chapter, the Federal Rules of Appellate Procedure governing appeals in civil cases shall apply to appeals taken under this section.

(f) Decisions of the special court shall be final and conclusive.

(July 29, 1970, 84 Stat. 497, Pub. L. 91-358, title I, § 111.)

Section references. — This section is referred to in § 11-1530. 1973 Ed., § 11-1529.

Prior Codifications. — 1981 Ed., § 11-1529.

CASE NOTES

ANALYSIS

Due process.

Final and conclusive nature of decisions.

Validity.

Due process.

It is for the District of Columbia Commission on Judicial Disabilities and Tenure in the first instance, and for special court under statute which reviews orders of the Commission, to determine the due process safeguards to which judge is entitled during a disciplinary proceeding. D.C. Code § 11-1529. *Halleck v. Berliner*, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

Final and conclusive nature of decisions.

Within statute providing that decisions of special court reviewing order of removal or retirement filed by the District of Columbia Commission on Judicial Disabilities and Ten-

ure are “final and conclusive,” words “final and conclusive” do not mean that the Supreme Court cannot issue an appropriate writ to bring before that Court a decision of the special court, and the All Writs Act is sufficient authorization for entertaining appropriate writ. D.C. Code §§ 11-1529, 11-1529(f); 28 U.S.C.A. § 1651(a). *Halleck v. Berliner*, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

Validity.

Statutory provision that the Chief Justice of the United States shall convene the special court which is to review orders of removal or retirement filed by the District of Columbia Commission on Judicial Disabilities and Tenure is not unconstitutional on theory that it imposes “purely local, or article I, responsibilities upon the Supreme Court”; the Chief Justice is an appropriate person to designate the members of the special court. D.C. Code § 11-1529(b); U.S. Const. art. 1, § 1 et seq.; art. 3,

§ 1 et seq. Halleck v. Berliner, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

Even assuming doctrine of separation of powers is fully applicable to the governmental structure of the District of Columbia, doctrine is not violated in judicial disciplinary proceedings either on ground that disciplinary functions of the Commission on Judicial Disabilities and Tenure represent an unconstitutional en-

croachment upon the independence of the judiciary of the District, or by reason of actions of members of the office of the United States Attorney in instigating or furnishing information in connection with the Commission's investigation. D.C. Code §§ 11-1526, 11-1529. Halleck v. Berliner, 427 F. Supp. 1225, 1977 U.S. Dist. LEXIS 17034 (1977).

§ 11-1530. Financial statements.

(a) Pursuant to such rules as the Commission shall promulgate, each judge of the District of Columbia courts shall, within one year following the date of enactment of the District of Columbia Court Reorganization Act of 1970 and at least annually thereafter, file with the Commission the following reports of the judge's personal financial interests:

(1) A report of the judge's income and the judge's spouse's income for the period covered by the report, the sources thereof, and the amount and nature of the income received from each such source.

(2) The name and address of each private foundation or eleemosynary institution, and of each business or professional corporation, firm, or enterprise in which the judge was an officer, director, proprietor, or partner during such period;

(3) The identity of each liability of \$5,000 or more owed by the judge or by the judge and the judge's spouse jointly at any time during such period.

(4) The source and value of all gifts in the aggregate amount or value of \$50 or more from any single source received by the judge during such period, except gifts from the judge's spouse or any of the judge's children or parents.

(5) The identity of each trust in which the judge held a beneficial interest having a value of \$10,000 or more at any time during such period, and in the case of any trust in which the judge held any beneficial interest during such period, the identity, if known, of each interest in real or personal property in which the trust held a beneficial interest having a value of \$10,000 or more at any time during such period. If the judge cannot obtain the identity of the trust interest, the judge shall request the trustee to report that information to the Commission in such manner as the Commission shall by rule prescribe.

(6) The identity of each interest in real or personal property having a value of \$10,000 or more which the judge owned at any time during such period.

(7) The amount or value and source of each honorarium of \$300 or more received by the judge during such period.

(8) The source and amount of all money, other than that received from the United States Government, received in the form of an expense account or as reimbursement for expenditures during such period.

(b)(1) Except as provided in paragraph (2) of this subsection the content of any report filed under this section shall not be open to inspection by anyone other than (A) the person filing the report, (B) authorized members, alternate members, or staff of the Commission to determine if this section has been complied with or in connection with duties of the Commission under this

subchapter, or (C) a special court convened under section 11-1529 to review a removal order of the Commission.

(2) Reports filed pursuant to paragraphs (2) and (7) of subsection (a) shall be made available for public inspection and copying promptly after filing and during the period they are kept by the Commission, and shall be kept by the Commission for not less than three years.

(3) The intentional failure by a judge of a District of Columbia court to file a report required by this section, or the filing of a fraudulent report, shall constitute willful misconduct in office and shall be grounds for removal from office under section 11-1526(a)(2).

(July 29, 1970, 84 Stat. 498, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(43)-(50), 108 Stat. 713.)

Cross references. — D.C. judges retirement fund, see § 1-714.

D.C. retirement funds, transition from District of Columbia Administration, see § 1-819.01.

District employees retirement program management, "retirement program" defined, see § 1-702.

District of Columbia courts, Executive Officer, eligibility for retirement, see § 11-1703.

Judges, tenure, see § 11-1502.

Section references. — This section is referred to in § 11-1527.

Prior Codifications. — 1981 Ed., § 11-1530.

1973 Ed., § 11-1530.

References in text. — The date of enactment of the District of Columbia Court Reorganization Act of 1970, referred to in the introductory language of subsection (a) of this section, is July 29, 1970.

Subchapter III. Retirement.

§ 11-1561. Definitions.

For purposes of this subchapter —

(1) The term "judge" means any judge of the District of Columbia Court of Appeals or the Superior Court or any person with judicial service as described in paragraph (2) of this section.

(2) The term "judicial service" means service as a judge in the District of Columbia Court of Appeals, the Superior Court, or the former Juvenile Court of the District of Columbia, District of Columbia Tax Court, police court, municipal court, Municipal Court of Appeals, or District of Columbia Court of General Sessions.

(3) The terms "retire" and "retirement" include retirement, resignation, or failure to be re commissioned or reappointed upon the expiration of a commission.

(4) The term "fund" means the District of Columbia Judicial Retirement and Survivors Annuity Fund established by section 11-1570.

(5) The term "widow" means a surviving wife of a judge who either (A) has been married to the judge for at least two years preceding his death or (B) is the mother of issue by the marriage and has not remarried.

(6) The term "widower" means a surviving husband of a judge who either (A) has been married to the judge for at least two years preceding her death or (B) is the father of issue by the marriage and has not remarried.

(7) The term "Commissioner" ["Mayor"] means the Commissioner [Mayor] of the District of Columbia.

(8) The term "child" means —

(A) an unmarried child under eighteen years of age, including (i) an adopted child, and (ii) a stepchild or recognized natural child who lived with the judge in a regular parent-child relationship;

(B) such unmarried child regardless of age who is incapable of self-support because of mental or physical disability incurred before age eighteen; or

(C) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university or comparable recognized educational institution. For the purpose of this paragraph, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while the child is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than five months and if the child shows to the satisfaction of the Secretary of the Treasury that the child has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(9) The term "lump-sum credit for retirement" means the unrefunded amount consisting of —

(A) retirement deductions made from the basic salary of a judge[:];

(B) amounts deposited covering earlier judicial and nonjudicial service; and

(C) interest on the deductions and deposits at 4 per centum a year to December 31, 1947, and 3 per centum a year thereafter compounded annually to December 31, 1956, or, in the case of a judge separated or transferred to a position not within the purview of this section before the judge has completed five years of service, to the date of the separation or transfer or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Official Code, sec. 1-701 et seq.), whichever is earlier; but the term "lump-sum credit for retirement" does not include interest—

(i) if the service covered thereby aggregates one year or less; or

(ii) for the fractional part of a month in the total service.

(10) The term "lump-sum credit for survivor annuity" means the unrefunded amount consisting of —

(A) survivor annuity deductions made from the salary of a judge;

(B) amounts deposited for survivor annuity covering earlier judicial and nonjudicial service; and

(C) interest on the deductions and deposits at 4 per centum a year to December 31, 1947, and 3 per centum a year thereafter compounded annually to December 31, 1956, or, in the case of a judge separated or transferred to a

position not within the purview of this section before the judge has completed five years of service, to the date of the separation or transfer or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (sec. 1-701 et seq.), whichever is earlier; but the term “lump-sum credit for survivor annuity” does not include interest —

- (i) if the service covered thereby aggregates one year or less; or
- (ii) for the fractional part of a month in the total service.

(July 29, 1970, 84 Stat. 499, Pub. L. 91-358, title I, § 111; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 2(a)(5), (6); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 124(b)(1), 254(a)(1); June 13, 1994, Pub. L. 103-266, §§ 1(b)(51)-(53), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, §§ 11253(a)(1), (b); Oct. 21, 1998, 112 Stat. 2422, Pub. L. 105-274, § 2(e)(4); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-277, § 804(e)(4); Apr. 20, 1999, D.C. Law 12-264, § 23, 46 DCR 2118.)

Cross references. — Retirement program, defined, see § 1-702.

Section references. — This section is referred to in §§ 1-621.03, 1-621.04, 1-702, 1-901.02, 11-1568, 11-1568.01, and 11-1569. This section is referred to in §§ 1-702, 11-1568, 11-1568.01, and 11-1569.

Prior Codifications. — 1981 Ed., § 11-1561.

1973 Ed., § 11-1561.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

References in text. — “The date of the enactment of the District of Columbia Retirement Reform Act,” referred to in paragraphs (9)(C) and (10)(C) of this section, is November 17, 1979.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1562. Eligibility for retirement.

(a) A judge is eligible for retirement under this subchapter when the judge has completed ten years of judicial service, whether continuous or not, or upon mandatory retirement as provided in section 11-1502.

(b) The retirement salary of a judge who retires shall commence as follows:

- (1) With twenty or more years of judicial service, at age fifty.
- (2) With less than twenty years of judicial service, at age sixty, unless the judge elects to receive a reduced salary beginning at age fifty-five or at the date of retirement if subsequent to that age.

(c) A judge with five years or more of judicial service, including civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, may voluntarily retire for a mental or physical disability which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of judicial duties. Such

disability shall be established by furnishing to the Secretary of the Treasury a certificate of disability signed by a duly licensed physician, approved by the Surgeon General of the United States, and containing such information and conclusions as the Secretary of the Treasury by regulation may require consistent with this subsection.

(d) Eligibility for retirement salary of a judge involuntarily retired for disability under section 11-1526(b) shall not be conditioned upon prior service.

(July 29, 1970, 84 Stat. 500, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(54), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, § 11253(a)(1).)

Section references. — This section is referred to in §§ 11-1564, 11-1566, and 11-1568.

Prior Codifications. — 1981 Ed., § 11-1562.

1973 Ed., § 11-1562.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1563. Withholding of retirement payments; lump-sum credit.

(a) There shall be deducted and withheld from the basic salary of each judge appointed after October 31, 1964, and each judge appointed before November 1, 1964, who has elected to come within the provisions of this subchapter an amount equal to 3 ½ per centum of the judge's basic salary. Amounts so deducted and withheld shall be paid to the Secretary of the Treasury for deposit in the fund. Each judge subject to this section shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall constitute a full and complete discharge and acquittance of all claims and demands whatsoever for all regular service during the period covered by such payment, except the right to the benefits to which the judge shall be entitled under this subsection, notwithstanding any law, rule, or regulation affecting the judge's salary.

(b) If the judge has not previously so deposited, each judge subject to this section shall deposit in the fund, with interest computed in accordance with section 11-1564(d)(2), a sum equal to 3 ½ per centum of the judge's basic salary received for judicial service performed by the judge as a judge prior to the date the judge became subject to the District of Columbia Judges Retirement Act of 1964. Each judge may elect to make such deposits in installments during the continuance of the judge's judicial service in such amounts as may be determined in each instance by the Secretary of the Treasury. Notwithstanding the failure of any judge to make such deposits, credit shall be allowed for the service rendered but the retirement pay for such judge shall be reduced by 10 per centum of such deposit remaining unpaid unless the judge shall elect to

eliminate the service involved for purposes of retirement salary computation, except as provided in section 11-1564(d).

(c) If any judge who is subject to this section is removed, resigns, or fails to be recommissioned or reappointed, the judge is entitled to be paid his [the judge's] lump-sum credit for retirement if application for payment is filed with the Secretary of the Treasury at least thirty-one days before the commencing date of any retirement salary for which the judge is eligible. The receipt of the lump-sum credit for retirement by the judge voids all retirement salary rights under this subchapter, until the judge is reemployed in judicial service subject to this subchapter.

(d) If a judge who has not elected to be within the survivor annuity provisions of this subchapter dies while in regular active service, or while receiving retirement salary under this subchapter but before having recouped all contributions, the lump-sum credit for retirement or the balance after deduction of retirement salary paid prior to death, if applicable, shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving the judge in the order of precedence established in section 11-1569(b). Such payments shall be a bar to recovery by any other person.

(July 29, 1970, 84 Stat. 501, Pub. L. 91-358, title I, § 111; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 124(b)(2), 254(b)(1); Oct. 1, 1989, 102 Stat. 2269-12, Pub. L. 100-462, § 135(a); June 13, 1994, Pub. L. 103-266, §§ 1(b)(55)-(57), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, §§ 11253(a)(1), (a)(4).)

Section references. — This section is referred to in § 11-1566.

Prior Codifications. — 1981 Ed., § 11-1563.

1973 Ed., § 11-1563.

References in text. — The District of Columbia Judges Retirement Act of 1964, referred to in the first sentence in subsection (b) of this section, is the Act of October 13, 1964, 78 Stat. 1055, Pub. L. 88-644.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the Dis-

trict of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.13(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1564. Computation of retirement salary; election to credit other service.

(a) The retirement salary of a judge who retires pursuant to section 11-1562(a) and (b) shall be paid annually in equal monthly installments during the remainder of the judge's life and shall bear the same ratio to the judge's basic salary immediately prior to the date of the judge's retirement as the total of the judge's aggregate years of service bears to the period of thirty years. A judge who elects to receive a reduced retirement salary pursuant to section 11-1562(b)(2) shall have retirement salary reduced by one-twelfth of 1 per centum for each month or fraction of a month the judge is under the age of sixty at the time of the commencement of reduced retirement salary. In no event

shall the retirement salary (including the amount provided by subsection (c) of this section) of a judge exceed 80 per centum of the judge's basic salary immediately prior to the date of the judge's retirement.

(b) The retirement salary of a judge retired for disability pursuant to section 11-1526(b) or section 11-1562(c) or (d) shall be paid annually in equal monthly installments during the remainder of the judge's life and shall be computed as provided in subsection (a). If a judge is retired for disability, the judge's retirement salary shall not be reduced because of the judge's age at the time of retirement. In no event shall the retirement salary of a judge retired for disability be less than 50 per centum or exceed 80 per centum of the judge's basic salary immediately prior to the date of the judge's retirement.

(c) In computing the retirement salary of a judge retiring under section 11-1562, the judge shall be entitled, if the judge so elects during the continuance of judicial service or at the time of retirement, to receive, in addition to the amount provided for in subsection (a) of this section, an amount (payable annually in equal monthly installments during the remainder of the judge's life) based on military and civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, computed in accordance with section 8339 (a), (b), (c), (d), (g), and (h) of that title, as applicable, subject to the provisions of section 8334 (c) and (d) of that title and the provisions of subsection (d) of this section; except that average pay for the purpose of the computation shall be deemed to be the basic salary of the judge immediately prior to the date of retirement under section 11-1562.

(d)(1) The crediting of service with respect to any judge under subsection (c) of this section shall be made on the standard basis of a deposit in the sum equal to 3 ½ per centum of the judge's basic salary, pay, or compensation for civilian service creditable under section 8332 of title 5, United States Code, with interest as provided in paragraph (2) of this subsection.

(2) Interest on deposits under this subsection and section 11-1567(b) shall be computed as follows:

(A) Interest shall be paid at a rate which (as determined by the Secretary of the Treasury) is equal to the average rate of return on investment (adjusted to the nearest one-eighth of 1 per centum) for the District of Columbia Judges' Retirement Fund (established by section 1-714) or the District of Columbia Judicial Retirement and Survivors Annuity Fund (established by section 11-1570) for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if the judge makes a lump-sum payment or during which the judge makes the first payment if the judge makes installment deposits, except that —

(i) for so much of any such period which occurs between the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (sec. 1-701 et seq.) and October 1, 1980, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one-eighth of 1 per centum) shall be used in determining the interest rate to be paid on deposits;

(ii) for so much of any such period which occurs between January 1, 1948, and the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (sec. 1-701 et seq.), the rate of 3 per centum a year, compounded annually, shall be used in determining the interest rate to be paid on deposits; and

(iii) for so much of any such period which occurs prior to January 1, 1948, the rate of 4 per centum a year, compounded annually, shall be used in determining the interest rate to be paid on deposits.

(B) Interest shall be payable for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made.

(C) If a judge elects to make deposit in installments, each payment shall include interest on that portion of the refund which is then being redeposited. Interest may not be charged for a period of separation from the service which began before October 31, 1956.

(3) Deposit under this subsection may not be required for —

(A) service before August 1, 1920;

(B) military service; or

(C) service for the Panama Railroad Company before January 1, 1924.

(4) If a judge elects to be credited with service under subsection (c) of this section, the judge's lump-sum credit, or any remaining balance thereof, in the Civil Service Retirement and Disability Fund or in the retirement fund of any other retirement system for civilian employees of the Government of the United States or the District of Columbia, shall be transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund under section 11-1570. The judge shall be deemed to consent to the transfer. The transfer shall be a complete discharge and acquittance of all claims and demands against the retirement system from which the funds were transferred on account of the service so credited.

(5) A judge whose lump-sum credit is transferred to the fund under paragraph (4) of this subsection is not required to make deposits in addition to the amount transferred for periods of service for which full contributions were made to the retirement system from which the transfer was made.

(6) In the case of a judge whose lump-sum credit has been transferred to the fund under paragraph (4) of this subsection and who has not elected a survivor annuity under section 11-1566, or prior corresponding provision of law, the Secretary of the Treasury shall refund to the judge any amount which the Secretary of the Treasury determines to be in excess of the amount of the deposit required by this subsection. In the case of a judge whose lump-sum credit has been transferred to the fund under paragraph (4) of this subsection and who, prior to the effective date of this section, had elected a survivor annuity and made deposits to the fund for survivor annuity purposes, the Secretary of the Treasury shall refund to the judge any amount which the Secretary of the Treasury determines in excess of the amount of the deposit required by section 11-1567.

(7) If any civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, is not covered by the amount of the

lump-sum credit transferred under paragraph (4) of this subsection, the judge may make deposit, on the standard basis prescribed by paragraph (1) of this subsection, with interest as provided in paragraph (2) of this subsection, in accordance with and subject to the applicable provisions of section 8334(c) and (d) of that title, of the amount or amounts necessary for the judge to receive full credit for that service for the purposes of subsection (c) of this section. The deposit may be made, as the judge may elect, in installments, during the continuance of the judge's judicial service, in such amounts as the Secretary of the Treasury may determine in each instance, or in a lump sum prior to or at the time of the judge's retirement under section 11-1562. A judge electing to make installment deposits shall not be given full credit for the service until the total required deposit is made.

(8) For the purpose of survivor annuity, deposits authorized by this subsection also may be made by the survivor of a judge.

(e) Nothing in this subchapter shall prevent a judge eligible therefor from simultaneously receiving retirement salary under this section and any annuity or retired pay to which the judge would otherwise be entitled under any other law without regard to this subchapter. However, in computing the retirement salary of a judge under this section, service used in the computation of such other annuity shall not be credited.

(July 29, 1970, 84 Stat. 501, Pub. L. 91-358, title I, § 111; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 124(b)(3), 254(b)(2); June 13, 1994, Pub. L. 103-266, §§ 1(b)(58)-(68), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, §§ 11253(a)(1), (a)(3), (c); Oct. 21, 1998, 112 Stat. 2423, Pub. L. 105-274, § 2(e)(5); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-277, § 804(e)(5).)

Section references. — This section is referred to in §§ 11-1563, 11-1566, 11-1567, and 11-1568.

Prior Codifications. — 1981 Ed., § 11-1564.

1973 Ed., § 11-1564.

References in text. — "The date of the enactment of the District of Columbia Retirement Reform Act," referred to in subsection (d)(2)(A)(i) and (ii), is November 17, 1979.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the Dis-

trict of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1565. Service by retired judges.

Any retired judge performing judicial duties as a senior judge on the District of Columbia Court of Appeals or the Superior Court shall be entitled, during the period for which he or she serves, to receive the same daily rate of pay as a judge on the court in which he or she performs such duties. The cumulative daily earnings of a senior judge, in any single year, when added to the annual retirement salary, may not exceed the current annual salary of a judge of the court in which he or she performs such duties. No deduction shall be withheld

for health benefits, Federal employee's life insurance, or retirement purposes from the salary paid to a judge during judicial service. The performance of such judicial service shall not create an additional retirement, change retirement, or create, or in any manner affect a survivor annuity.

(July 29, 1970, 84 Stat. 503, Pub. L. 91-358, title I, § 111; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 14(c).)

Section references. — This section is referred to in §§ 11-1566 and 11-1567. 1973 Ed., § 11-1565.

Prior Codifications. — 1981 Ed., § 11-1565.

§ 11-1566. Survivor annuity; election; relinquishment.

(a) Any judge, whether or not subject to sections 11-1562 to 11-1565, may, by written election filed with the Secretary of the Treasury within six months after the date on which the judge takes office or is reappointed or recommissioned, or within six months after the judge marries, elect to be within the survivor annuity provisions of this subchapter.

(b) Any judge in regular active service or any retired judge, who shall have elected survivor annuity, and who after that election is unmarried and does not have a dependent child, may elect —

(1) to terminate the deductions and withholdings from the judge's salary under section 11-1567(a) and any installment payments elected to be made under section 11-1567(b); and

(2) to have paid to the judge the lump-sum credit for survivor annuity. Any election under this subsection shall be made in writing and filed with the Secretary of the Treasury.

(c) If any judge who shall have elected survivor annuity resigns from office otherwise than under the provisions of this subchapter or is removed, the judge shall be entitled to be paid the lump-sum credit for survivor annuity.

(d) Payment of the lump-sum credit for survivor annuity as provided in this section shall extinguish all claims with respect to survivor annuity.

(July 29, 1970, 84 Stat. 503, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(69)-(71), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, §§ 11253(a)(1), (a)(2).)

Section references. — This section is referred to in §§ 11-1564, 11-1568.01, 11-1568.02, and 11-1569.

Prior Codifications. — 1981 Ed., § 11-1566.

1973 Ed., § 11-1566.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1567. Survivor annuity; payments to fund.

(a) There shall be deducted and withheld from the salary (whether basic or retirement) of each judge who has elected survivor annuity a sum equal to 3.5 percent of that salary. The amounts so deducted and withheld shall, in accordance with such procedures as may be prescribed by the Secretary of the Treasury, be deposited in the fund. Every judge who elects survivor annuity shall be deemed thereby to consent and agree to the deductions from the judge's salary as provided in this subsection, and payment less such deductions shall constitute a full and complete discharge and acquittance of all claims and demands whatever for all judicial services rendered by such judge during the period covered by such payment, except the right to the benefits to which the judge or the judge's survivors shall be entitled under the survivor annuity provisions of this subchapter.

(b) If the judge has not previously so deposited, each judge who has elected survivor annuity shall deposit to the fund, with interest computed in accordance with section 11-1564(d)(2), a sum equal to 3.5 percent of the judge's salary received for judicial service and of retirement salary (but excluding salary for judicial service under section 11-1565); and a sum equal to 3.5 percent of the judge's basic salary, pay, or compensation for civilian service creditable under section 8332 of title 5, United States Code, with interest as provided in section 11-1564(d). Except to the extent that the Secretary of the Treasury has made refund to the judge under section 11-1564(d)(6), deposit is not required with respect to that portion of the service of the judge covered by the transfer, under section 11-1564(d)(4), of the judge's lump-sum credit to the fund. In addition, deposit may not be required for the types of service described in section 11-1564(d)(3). Each judge may elect to make deposits under this subsection in installments during the continuance of the judge's judicial service in such amounts as may be determined in each instance by the Secretary of the Treasury. Deposits under this subsection also may be made by the survivor of a judge.

(c) If a judge or survivor fails to make such deposits, credit shall be allowed for the service, but the annuity of the widow or widower of such judge shall be reduced by an amount equal to 10 per centum of the deposit required by this section, computed as of the date of the death of the judge, unless the widow or widower elects to eliminate the service not covered by deposit entirely from credit for computation purposes except as provided in section 11-1564(d)(3).

(July 29, 1970, 84 Stat. 504, Pub. L. 91-358, title I, § 111; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 254(b)(3); June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(a)(1); June 13, 1994, Pub. L. 103-266, §§ 1(b)(72), (73), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, § 11253(a)(2).)

Section references. — This section is referred to in §§ 11-1564, 11-1566, 11-1568, and 11-1569.

Prior Codifications. — 1981 Ed., § 11-1567.
1973 Ed., § 11-1567.

§ 11-1568. Survivor annuity; entitlement; computation.

(a) The service of a judge for the purpose of any provision of this subchapter which refers to this subsection includes the judge's judicial service (and retired service for which deductions are made) and, subject to section 8334(d) of title 5, United States Code, the judge's military and civilian service which is creditable under section 8332 of that title.

(b) Nothing in this subchapter shall prevent a widow or widower eligible therefor from simultaneously receiving a survivor annuity under this subchapter and any other annuity (survivor or otherwise) or retired pay to which he or she would otherwise be entitled under any other law without regard to this subchapter. However, in computing the survivor annuity of that widow or widower under this subchapter, service used in the computation of such other annuity shall not be credited.

(c) If a judge who has elected a survivor annuity dies in regular active service or after having retired from such service with at least five years of allowable service under this section for which payments have been withheld or deposits made, the survivor annuity shall be paid as follows:

(1) If the judge is survived by a widow or widower but no child, the widow or widower shall receive, beginning on the day after the judge dies, an amount computed as provided in subsection (e).

(2) If the judge is survived by a widow or widower and one or more children —

(A) the widow or widower shall receive an immediate annuity in the amount computed as provided in subsection (e); and

(B) there also shall be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow or widower, but not to exceed the lesser of (i) \$8,424 per year divided by the number of such children or (ii) \$2,808 per child per year.

(3) If the judge leaves no surviving widow or widower but leaves a surviving child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which the widow or widower would have been entitled under paragraph (1) of this subsection had he or she survived, but not to exceed the lesser of (A) \$10,110 per year divided by the number of such children or (B) \$3,370 per child per year.

For the purpose of computing, under this subsection, the annuity of a child that commences on or after January 1, 1987, the figures \$8,424, \$2,808, \$10,110, and \$3,370 (provided in paragraphs (2) and (3)) shall be increased by the total percentage of the increases allowed and in force with respect to retirement salaries of judges under section 11-1571(a) of this title on or after such date. An annuity payable to a widow or widower under this section shall be terminable upon death or upon remarriage prior to the attainment of fifty-five years of age. The annuity payable to a child shall be terminable upon the child's death or marriage or ceasing to be a child as defined in section 11-1561(8). In case of the death of a widow or widower of a judge leaving a child or children of the judge surviving, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the

annuity of a child is terminated, the annuities of any remaining child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was terminated had not survived the judge.

(d) Questions of disability or other eligibility requirements of a child under this section shall be determined by the Secretary of the Treasury who may order such medical or other examinations at any time as the Secretary of the Treasury deems necessary with respect to determining the facts concerning the disability of a child receiving or applying for an annuity under this subchapter. An annuity may be denied or suspended for failure to submit to examination.

(e) The annuity of a widow or widower of a judge or retired judge who elected a survivor annuity shall be equal to —

(1) in the case of a judge who dies while in active regular service as a judge, the greater of —

(A) 55 percent of the retirement salary the judge would have been entitled to receive (as computed under section 11-1564) if the judge had retired on the day before the date of death (without regard to the age requirements prescribed in section 11-1562(b)), or

(B) 55 percent of the retirement salary the judge would have been entitled to receive (as computed under section 11-1564) if the judge had retired on the day before the date of death with 15 years of service for the purposes of this subchapter (without regard to the age requirements prescribed in section 11-1562(b)); and

(2) In the case of a retired judge, 55 percent of the retirement salary payable to such judge on the day before the date of the judge's death.

(July 29, 1970, 84 Stat. 504, Pub. L. 91-358, title I, § 111; June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(a)(2); June 13, 1994, Pub. L. 103-266, §§ 1(b)(74)-(76), 108 Stat. 713; Oct. 21, 1998, 112 Stat. 2422, Pub. L. 105-274, § 2(e)(1); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-277, § 804(e)(1).)

Section references. — This section is referred to in § 11-1569. 1973 Ed., § 11-1568.

Prior Codifications. — 1981 Ed., § 11-1568.

§ 11-1568.01. Opportunity to revoke a previous survivor annuity election.

(1)(A) Any individual who, before the date of the enactment of this Act, made an election under section 11-1566 of title 11 of the District of Columbia Official Code, to come within the purview of the survivor annuity provisions of subchapter III of chapter 15 of such title may revoke that election. Such a revocation shall constitute a complete withdrawal from the survivor annuity program provided for in such subchapter.

(B) A revocation under subparagraph (A) shall be submitted in writing to the Secretary of the Treasury.

(2) A revocation under paragraph (1) shall be effective on the day it is received by the official referred to in subparagraph (B) of such paragraph.

(3)(A) On the effective date of a revocation under paragraph (1), any right to survivor benefits (to which the revocation relates) for the survivors of the individual who makes the revocation shall terminate, and all amounts credited to the account of such individual under section 11-1570(c) of Title 11 of the District of Columbia Official Code, together with interest computed as provided in subparagraph (B), shall be returned to that individual in a lump-sum payment.

(B) For the purpose of subparagraph (A), interest shall be computed in accordance with section 11-1561(10)(C) of title 11 of the District of Columbia Official Code.

(4)(A) Any individual who makes a revocation under paragraph (1) and who thereafter becomes eligible to make an election under section 11-1556 of Title 11 of the District of Columbia Official Code may make such election only if such individual redeposits, to the credit of the District of Columbia Judicial Retirement and Survivors Annuity Fund referred to in section 11-1561(4) of such title, the full amount of the lump-sum payment made to such individual under paragraph (4), together with interest.

(B) For the purpose of subparagraph (A), interest shall be computed at 3 percent per annum, compounded on December 31 of each year from the date of the lump-sum payment referred to in such subparagraph until the date on which the amount referred to in such subparagraph is redeposited under such subparagraph.

(June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(c); Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, § 11253(a)(3); Oct. 21, 1998, 112 Stat. 2423, Pub. L. 105-274, § 2(e)(6); Oct. 21, 1998, 112 Stat. 2681-538, Pub. L. 105-277, § 804(e)(6).)

Prior Codifications. — 1981 Ed., § 11-1568.1.

References in text. — “The date of the enactment of this Act,” referred to in paragraph (1)(A), is June 6, 1986.

The reference in paragraph (4)(A) to § 11-1556 probably should be to § 11-1566.

Editor’s notes. — Section 23(b) of D.C. Law 15-354 provided that the section designation of § 11-1568.1 of the District of Columbia Official Code is redesignated as § 11-1568.01.

§ 11-1568.02. Additional opportunity to make a survivor annuity election.

(1) Any individual who, on or before the date of the enactment of this Act, has not made an election under section 11-1566(a) of Title 11 of the District of Columbia Official Code, to come within the purview of the survivor annuity provisions of subchapter III of Chapter 15 of such title and is no longer entitled to make such an election may make such an election. Any such election shall be submitted in writing to the Secretary of the Treasury.

(2) An election under paragraph (1) shall be effective on the day it is received by the official referred to in such paragraph.

(June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(d); Oct. 21, 1998, 112 Stat.

§ 11-1568.03 ORGANIZATION AND JURISDICTION OF THE COURTS

2422, Pub. L. 105-274, § 2(e)(2); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-277, § 804(e)(2).)

Prior Codifications. — 1981 Ed., § 11-1568.2.

References in text. — “The date of the enactment of this Act,” referred to in the first sentence of paragraph (1), is June 6, 1986.

Editor’s notes. — Section 23(c) of D.C. Law 15-354 provided that the section designation of § 11-1568.2 of the District of Columbia Official Code is redesignated as § 11-1568.02.

§ 11-1568.03. Period for exercise of right to revoke or elect.

The right to revoke an election under subsection (d) or to make an election under subsection (e) is irrevocably waived if not exercised within 180 days after the date of the enactment of this Act.

(June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(e).)

Prior Codifications. — 1981 Ed., § 11-1568.3.

References in text. — The reference to “subsection (d)” should be to subsection (c) of § 601 of Pub. L. 99-335 which is codified at § 11-1568.01.

The reference to “subsection (e)” should be to subsection (d) of § 601 of Pub. L. 99-335 which is codified at § 11-1568.02.

“The date of the enactment of this Act” is June 6, 1986.

Editor’s notes. — Section 23(d) of D.C. Law 15-354 provided that the section designation of § 11-1568.3 of the District of Columbia Official Code is redesignated as § 11-1568.03.

§ 11-1569. Survivor annuity; payment; order of precedence.

(a) Survivor annuities shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued.

(b) In any case in which —

(1) a judge who has elected survivor annuity shall die (A) while in regular active service after having rendered five years of allowable service as provided in section 11-1568(a) or while receiving retirement salary under this subchapter but without a survivor or survivors entitled to annuity under section 11-1568(c) or (B) while in regular active service but before having rendered five years of allowable service; or

(2) the right of all persons entitled to an annuity under section 11-1568(c) based on the service of the judge shall terminate before a valid claim therefor shall have been established;

the lump-sum credit shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:

First, to the beneficiary or beneficiaries whom the judge may have designated in writing to the Secretary of the Treasury prior to the judge’s death;

Second, if there be no such beneficiary, to the widow or widower of the judge;

Third, if none of the above, to the child or children of the judge and the descendants of any deceased children by representation;

Fourth, if none of the above, to the parents of the judge or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such judge;

Sixth, if none of the above, to such other next of kin of the judge as may be determined by the Secretary of the Treasury to be entitled under the laws of the domicile of the judge at the time of the judge's death.

Determination as to the widow, widower, or child of a judge for purposes of this subsection shall be made by the Secretary of the Treasury without regard to the definitions in section 11-1561.

(c) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge shall terminate before the aggregate amount of annuity paid (together with any amounts received by the judge as retirement salary) equals the total amount credited to the individual account of the judge, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge or the end of the 90-day period beginning on the date of the enactment of the District of Columbia Retirement Reform Act (D.C. Official Code, sec. 1-701 et seq.), whichever is earlier, the difference shall be paid upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (b).

(d) Any accrued annuity remaining unpaid upon the termination (other than by reason of death) of the annuity of any person based upon the service of a judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving an annuity based upon the service of a judge shall be paid, upon establishment of a valid claim therefor, in the following order of precedence:

First, to the duly appointed executor or administrator of the estate of the annuitant;

Second, if there is no such executor or administrator, payment may be made, after the expiration of thirty days from the date of death of the annuitant, to such person or persons as may appear in the judgment of the Secretary of the Treasury to be legally entitled thereto, and such payments shall be a bar to recovery by any other person.

(e) Where any payment under sections 11-1566 to 11-1569 is to be made to a minor or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the jurisdiction wherein the claimant resides or is otherwise legally vested with the care of the claimant or the claimant's estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the jurisdiction wherein the claimant resides, payment may be made to any person who, in the judgment of the Secretary of the Treasury, is respon-

sible for the care of the claimant, and the payment bars recovery by any other person.

(July 29, 1970, 84 Stat. 506, Pub. L. 91-358, title I, § 111; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 254(a)(2); June 13, 1994, Pub. L. 103-266, §§ 1(b)(77)-(79), 108 Stat. 713; Oct. 21, 1998, 112 Stat. 2422, Pub. L. 105-274, § 2(e)(1); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-177, § 804(e)(1).)

Section references. — This section is referred to in § 11-1563.

Prior Codifications. — 1981 Ed., § 11-1569.

1973 Ed., § 11-1569.

References in text. — “The date of the enactment of the District of Columbia Retirement Reform Act,” referred to in subsection (c) of this section, is November 17, 1979.

§ 11-1570. The District of Columbia Judicial Retirement and Survivors Annuity Fund.

(a) There is established in the Treasury a fund known as the District of Columbia Judicial Retirement and Survivors Annuity Fund (hereafter in this section referred to as the ‘Fund’), which shall consist of the following assets:

(1) Amounts deposited by, or deducted and withheld from the salary and retired pay of, a judge under section 1563 or 1567 of this title, which shall be credited to an individual account of the judge.

(2) Amounts transferred from the District of Columbia Judges’ Retirement Fund under section 124(c)(1) of the District of Columbia Retirement Reform Act, as amended by section 11252 of the Balanced Budget Act of 1997.

(3) Amounts deposited under subsection (d) [of this section].

(4) Any return on investment of the assets of the Fund.

(b)(1) The Secretary of the Treasury (hereafter in this section referred to as the “Secretary”) shall be responsible for the administration of the Fund. The Secretary may carry out such responsibilities through an agreement with a Trustee or contractor (who may be the Trustee or contractor appointed to carry out responsibilities relating to Federal benefit payments under subtitle A of title XI of the Balanced Budget Act of 1997 and an enrolled actuary (as defined in section 7701(a)(35) of the Internal Revenue Code of 1986) who is a member of the American Academy of Actuaries (who may be the enrolled actuary engaged under such Act). Notwithstanding any other provision of District law or any other law, rule, or regulation, any Trustee, contractor, or enrolled actuary selected by the Secretary under this subsection may, with the approval of the Secretary, enter into one or more subcontracts with the District of Columbia government or any person to provide services to such Trustee, contractor, or enrolled actuary in connection with its performance of its agreement with the Secretary. Such Trustee, contractor, or enrolled actuary shall monitor the performance of any subcontract to which it is a party and enforce its provisions.

(2) The Secretary shall submit to the President an annual estimate of the expenditures necessary for the maintenance and operation of the Fund, and such supplemental estimates as may be required from time to time for the same purposes, according to law.

(3) The Secretary may cause periodic examinations of the Fund to be made by an enrolled actuary (as defined in section 7701(a)(35) of the Internal Revenue Code of 1986) who is a member of the American Academy of Actuaries.

(c)(1) Amounts in the Fund are available—

(A) for the payment of judges retirement pay, annuities, refunds, and allowances under this subchapter;

(B) to cover the reasonable and necessary expenses of administering the Fund under any agreement entered into with a Trustee, contractor, or enrolled actuary under subsection (b)(1), including any agreement with a department, agency, or instrumentality of the United States; and

(C) to cover the reasonable and necessary administrative expenses incurred by the Secretary in carrying out the Secretary's responsibilities under this subchapter.

(2) Notwithstanding any other provision of District law or any other law (other than the Internal Revenue Code of 1986), rule, or regulation—

(A) the Secretary may review benefit determinations under this subchapter made prior to the date of the enactment of the Balanced Budget Act of 1997 [August 5, 1997], and shall make initial benefit determination after such date; and

(B) the Secretary may recoup or recover, or waive recoupment or recovery of, any amounts paid under this subchapter as a result of errors or omissions by any person.

(3)(A) In accordance with procedures approved by the Secretary, the Secretary shall provide to any individual whose claim for a benefit under this subchapter has been denied in whole or in part—

(i) adequate written notice of such denial, setting forth the specific reasons for the denial in a manner calculated to be understood by the average participant in the program of benefits under this subchapter; and

(ii) a reasonable opportunity for a full and fair review of the decision denying such claim.

(B) Any factual determination made by the Secretary pursuant to this paragraph shall be presumed correct unless rebutted by clear and convincing evidence. The Secretary's interpretation and construction of the benefit provisions of this subchapter shall be entitled to great deference.

(d)(1) The Secretary shall pay into the Fund from the General Fund of the Treasury, not later than the close of each fiscal year, an amount equal to the sum of —

(A) the normal cost for the year;

(B) the annual amortization amount for the year (which may not be less than zero); and

(C) the covered administrative expenses for the year.

(2) For purposes of this subsection:

(A) The "original unfunded liability" is the amount that is the present value as of September 30, 1997, of future benefits payable from the Fund (net of the sum of the present value of future normal costs and plan assets as of such date).

(B) The "annual amortization amount" is the amount determined by the

enrolled actuary to be necessary to amortize in equal annual installments (until fully amortized) —

- (i) the original unfunded liability over a 30-year period;
- (ii) a net experience gain or loss over a 10-year period; and
- (iii) any other changes in actuarial liability over a 20-year period.

(C) The “covered administrative expenses” are the expenses determined by the Secretary (on an annual basis) to be necessary to administer the Fund.

(3) Deposits made under this subsection shall not be credited to the account of any individual.

(e) The Secretary shall invest such portion of the Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(f) None of the moneys mentioned in this subchapter shall be assignable, either in law or in equity, or be subject to execution, levy, attachment, garnishment, or other legal process (except to the extent permitted pursuant to the District of Columbia Spouse Equity Act of 1988 [subchapter VI of Chapter 5 of Title 1]).

(g) Notwithstanding any other provision of District law, rule, or regulation, any civil action brought —

(1) by an individual to enforce or clarify rights to benefits from the Fund; or

(2) by the Secretary —

(A) to enforce any claim arising (in whole or in part) under this section or any contract entered into to carry out this section,

(B) to recover benefits improperly paid from the Fund or to clarify an individual’s rights to benefits from the Fund, or

(C) to enforce any provision of this section or any contract entered into to carry out this section,

shall be brought in the United States District Court for the District of Columbia.

(h) For purposes of the Internal Revenue Code of 1986—

(1) the Fund shall be treated as a trust described in section 401(a) of the Code that is exempt from taxation under section 501(a) of the Code;

(2) any transfer to or distribution from the Fund shall be treated in the same manner as a transfer to or distribution from a trust described in section 401(a) of the Code; and

(3) the benefits provided by the Fund shall be treated as benefits provided under a governmental plan maintained by the District of Columbia.

(i) For purposes of the Employee Retirement Income Security Act of 1974, the benefits provided by the Fund shall be treated as benefits provided under a governmental plan maintained by the District of Columbia.

(j) To the extent that any provision of subpart A of part I of subchapter D of the chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 401 et seq.) is

amended after the date of the enactment of this subsection, such provision as amended shall apply to the Fund only to the extent the Secretary determines that application of the provision as amended is consistent with the administration of this subchapter.

(k) Federal obligations for benefits under this subchapter are backed by the full faith and credit of the United States.

(l) The provisions of section 664 of title 18, United States Code (relating to theft or embezzlement from employee benefit plans), shall apply to the Fund.

(July 29, 1970, 84 Stat. 507, Pub. L. 91-358, title I, § 111; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 124(b)(4); Aug. 5, 1997, 111 Stat. 756, Pub. L. 105-33, §§ 11251(a), 11253(a)(1); Oct. 21, 1998, 112 Stat. 2419, Pub. L. 105-274, § 2(a); Oct. 21, 1998, 112 Stat. 2681-533, Pub. L. 105-277, § 804(a); Dec. 23, 2004, 118 Stat. 3970, Pub. L. 108-489, § 3(a)(1), (b)(1).)

Cross references. — District of Columbia judges retirement fund, see § 1-714.

District of Columbia Judicial Retirement and Survivors Annuity Fund, transition from District of Columbia Administration, see § 1-819.01.

Section references. — This section is referred to in § 11-1568.01.

Prior Codifications. — 1981 Ed., § 11-1570.

1973 Ed., § 11-1570.

Effect of amendments. — Pub. L. 108-489, in subsec. (c), added par. (3); and added subsec. (l).

Effective date. — Section 2(f) of Pub. L. 105-274, 112 Stat. 2423, provided that § 2(a) of the act shall take effect October 1, 1998.

Pub. L. 108-489, § (3)(a)(2), provided that: "The amendment made by paragraph (1) shall apply with respect to claims for benefits which are made after the date of the enactment of this Act Dec. 23, 2004."

Pub. L. 108-489, § (3)(b)(2) provided that: "The amendment made by paragraph (1) shall

take effect on the date of the enactment of this Act Dec. 23, 2004."

References in text. — Subtitle A of Title XI of the Balanced Budget Act of 1997, referred to in (b)(1) and (c)(2)(A), is subtitle A of title XI of Pub. L. 105-33, 111 Stat. 731.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1571. Periodic increases; existing rights.

(a) The retirement salary of any judge, or the annuity of any person based upon the service of a judge, who, on the effective date of any increase which, after the effective date of this section, becomes payable under the provisions of section 8340 (b) of title 5, United States Code, is receiving such salary or annuity, or who, before the next such increase first becomes payable under such section, receives such salary or annuity, either (1) under the provisions of this subchapter, or (2) under the provisions of section 11-1701, as in effect prior to the effective date of this section, and its predecessor laws, shall be increased on the effective date of the increase by a percentage equal to the percentage of such increase under section 8340 of title 5, United States Code.

(b) Nothing in this subchapter shall defeat or diminish rights acquired under section 11-1701, as in effect prior to the effective date of this section, and

its predecessor laws, except on the election and with the consent of the judge, annuitant, or other person affected.

(July 29, 1970, 84 Stat. 507, Pub. L. 91-358, title I, § 111; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 252(a).)

Section references. — This section is referred to in § 11-1568. 1973 Ed., § 11-1571.

Prior Codifications. — 1981 Ed., § 11-1571.

§ 11-1572. Regulations; effect on Reform Act.

(a) The Secretary is authorized to issue regulations to implement, interpret, administer, and carry out the purposes of this subchapter, and, in the Secretary's discretion, those regulations may have retroactive effect, except that nothing in this subsection may be construed to permit the Secretary to issue any regulation to retroactively reduce or eliminate the benefits to which any individual is entitled under this subchapter.

(b) This subchapter supersedes any provision of the District of Columbia Retirement Reform Act (Public Law 96-122) inconsistent with this subchapter and the regulations thereunder.

(Oct. 21, 1998, 112 Stat. 2420, Pub. L. 105-274, § 2(b); Oct. 21, 1998, 112 Stat. 2681-535, Pub. L. 105-277, § 804(b).)

Cross references. — Register of wills, deputies and other employees, see § 11-2105.

Superior Court, administration by chief judge, discharge of duties, see § 11-906.

Prior Codifications. — 1981 Ed., § 11-1572.

CHAPTER 17. ADMINISTRATION OF DISTRICT OF COLUMBIA COURTS.

Subchapter I. Court Administration

Sec.

- 11-1701. Administration of District of Columbia court system.
- 11-1702. Responsibilities of chief judges in the respective courts.
- 11-1703. Executive Officer of the District of Columbia courts; appointment; compensation.
- 11-1704. Oath of the Executive Officer.

Subchapter II. Court Personnel

- 11-1721. Clerks of courts.
- 11-1722. Director of Social Services.
- 11-1723. Fiscal Officer.
- 11-1724. Auditor-Master.
- 11-1725. Appointment of nonjudicial personnel.
- 11-1726. Compensation and benefits for court personnel.
- 11-1727. Court reporters.
- 11-1728. Recruitment and training of personnel and travel.

Sec.

- 11-1729. Service of United States marshal.
- 11-1730. Reports of court personnel.
- 11-1731. Reports of other personnel.
- 11-1732. Magistrate judges.
- 11-1732A. Special rules for magistrate judges of the Family Court of the Superior Court and the Domestic Violence Unit.

Subchapter III. Duties and Responsibilities

- 11-1741. Court operations and organization.
- 11-1742. Property and disbursement.
- 11-1742a. Multiyear contracting authority and leasing agreements.
- 11-1743. Annual budget and expenditures.
- 11-1744. Information and liaison services.
- 11-1745. Reports and records.
- 11-1746. Certification of copies of papers or documents filed in District of Columbia courts.
- 11-1747. Delegation of authority.

*Subchapter I. Court Administration.***§ 11-1701. Administration of District of Columbia court system.**

(a) There shall be a Joint Committee on Judicial Administration in the District of Columbia (hereafter in this chapter referred to as the "Joint Committee") consisting of (1) the Chief Judge of the District of Columbia Court of Appeals, who shall serve as Chair, (2) an associate judge of that court elected annually by the judges thereof, (3) the Chief Judge of the Superior Court, and (4) two associate judges of that court elected annually by the judges thereof.

(b) The Joint Committee shall have responsibility within the District of Columbia court system for the following matters:

(1) General personnel policies, including those for recruitment, removal, compensation, and training.

(2) Accounts and auditing.

(3) Procurement and disbursement.

(4) Submission of the annual budget requests of the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, and the District of Columbia Court System as the integrated budget of the District of Columbia courts, except that such requests may be modified upon the concurrence of four of the five members of the Joint Committee.

(5) Repealed.

(6) Formulation and enforcement of standards for outside activities of and receipt of compensation by the judges of the District of Columbia court system.

(7) Development and coordination of statistical and management infor-

mation systems and reports supporting the annual report of the District of Columbia court system.

(8) Liaison between the District of Columbia court system and the court systems of other jurisdictions, including the Judicial Conference of the United States, the Judicial Conference of the District of Columbia Circuit, and the Federal Judicial Center.

(9) With the concurrence of the respective chief judges of the District of Columbia courts, other policies and practices of the District of Columbia court system and resolution of other matters which may be of joint and mutual concern of the District of Columbia Court of Appeals and the Superior Court.

(c) The Joint Committee, with the assistance of the Executive Officer of the District of Columbia courts, shall —

(1) consider and evaluate the business of the courts and means of improving the administration of justice within the District of Columbia court system and shall report thereon in its annual report;

(2) prepare and publish an annual report of the District of Columbia court system regarding the work of the courts, the performance of the duties enumerated in this chapter, and of any recommendations relating to the courts;

(3) recommend from time to time to the Congress changes in the organization, jurisdiction, operation, and procedures of the courts which are appropriate for legislative action, and institute such changes, pursuant to the responsibilities enumerated in subsection (b), in the methods of administering judicial business in the court system as would improve the administration of justice; and

(4) arrange for such training seminars, and other related services, as are desirable and feasible for judges and other court personnel, including services from the Federal Judicial Center on a reimbursable basis.

(d) The Joint Committee shall have authority to issue all orders and directives necessary to implement the responsibilities and duties enumerated in this section.

(July 29, 1970, 84 Stat. 508, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(80), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 752, Pub. L. 105-33, § 11242(a); Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 329; Oct. 16, 2006, 120 Stat. 2026, Pub. L. 109-356, § 116(a).)

Cross references. — Judicial retirement, periodic increases and existing rights, see § 11-1571.

Section references. — This section is referred to in §§ 11-1571, 11-1702, and 11-1703.

Prior Codifications. — 1981 Ed., § 11-1701.

1973 Ed., § 11-1701.

Effect of amendments. — Pub. L. 108-335 repealed subsec. (b)(5) which had read as follows: “(5) Approval of the bonds of fiduciary employees within the District of Columbia court system.”

Pub. L. 109-356 made a technical correction

to Pub. L. 108-335 that did not change the text of the section.

Effective date. — Section 116(c) of Pub. L. 109-356 provided that the amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005 [Pub. L. 108-335].

Editor’s notes. — Termination of Federal Disclosure Requirements: See Pub. L. 99-573, § 6.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia

Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the Dis-

trict of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

CASE NOTES

ANALYSIS

In general.
Purpose.

In general.

Complaint by court reporters of District of Columbia courts presented problems capable of resolution through administrative processes of that court or available grievance procedures and it was appropriate to apply abstention doctrine so as to avoid needless conflict and intrusion into management of daily and routine affairs of superior court. D.C. Code §§ 1-121 et seq., 1-121(a), 11-102, 11-1701, 11-1721 to 11-1731, 11-1727(a); 5 U.S.C. §§ 5542, 6101(a)(1). *Association of Court Reporters of Superior Court v. Superior Court for District of Colum-*

bia, 424 F. Supp. 90, 1976 U.S. Dist. LEXIS 11801 (1976).

Purpose.

Statutory provisions governing administration of District of Columbia Court system, appointment of nonjudicial personnel, responsibilities of chief judges, and executive officers of courts were intended to permit executive officer to exercise day-to-day control over nonjudicial personnel, while authorizing, but not mandating, joint committee or chief judges to review executive officer's appointments and terminations. D.C. Code 1981, §§ 11-1701 to 11-1703, 11-1725, 11-1725(a, b). *Romansky v. Polansky*, 466 A.2d 1253, 1983 D.C. App. LEXIS 498 (1983).

§ 11-1702. Responsibilities of chief judges in the respective courts.

(a) The Chief Judge of the District of Columbia Court of Appeals, in addition to the authority conferred on the Chief Judge by Chapter 7 of this title, shall supervise the internal administration of that court —

(1) including all administrative matters other than those within the responsibility enumerated in section 11-1701(b), and

(2) including the implementation in that court of the matters enumerated in section 11-1701(b),
consistent with the general policies and directives of the Joint Committee.

(b) The Chief Judge of the Superior Court, in addition to the authority conferred on the Chief Judge by Chapter 9 of this title, shall supervise the internal administration of that court —

(1) including all administrative matters other than those within the responsibility enumerated in section 11-1701(b), and

(2) including the implementation in that court of the matters enumerated in section 11-1701(b),
consistent with the general policies and directives of the Joint Committee.

(July 29, 1970, 84 Stat. 509, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(81), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-1702.

1973 Ed., § 11-1702.

CASE NOTES

Purpose.

Statutory provisions governing administration of District of Columbia Court system, appointment of nonjudicial personnel, responsibilities of chief judges, and executive officers of courts were intended to permit executive officer to exercise day-to-day control over nonjudicial

personnel, while authorizing, but not mandating, joint committee or chief judges to review executive officer's appointments and terminations. D.C. Code 1981, §§ 11-1701 to 11-1703, 11-1725, 11-1725(a, b). *Romansky v. Polansky*, 466 A.2d 1253, 1983 D.C. App. LEXIS 498 (1983).

§ 11-1703. Executive Officer of the District of Columbia courts; appointment; compensation.

(a) There shall be an Executive Officer of the District of Columbia courts (hereafter in this chapter referred to as the "Executive Officer"). The Executive Officer shall be responsible for the administration of the District of Columbia court system subject to the supervision of the Joint Committee and the chief judges of the respective courts as provided in this chapter. The Executive Officer shall be subject to the supervision of the Joint Committee regarding administrative matters that are enumerated in section 11-1701(b). The Executive Officer shall be subject to the supervision of the chief judges in their respective courts: (1) regarding all administrative matters other than those within the responsibility enumerated in section 11-1701(b), and (2) regarding the implementation in the respective courts of the matters enumerated in section 11-1701(b), consistent with the general policies and directives of the Joint Committee.

(b) The Executive Officer shall be appointed, and subject to removal, by the Joint Committee on Judicial Administration with the approval of the chief judges of the District of Columbia Courts. In making such appointment the Joint Committee shall consider experience and special training in administrative and executive positions and familiarity with court procedures.

(c) The Executive Officer shall be a bona fide resident of the District of Columbia or become a resident not more than 180 days after the date of appointment except that the Executive Officer in office at the effective date of this Act shall not be required to be or to become a resident of the District of Columbia.

(d) The Executive Officer shall receive the same compensation, including retirement benefits, as an associate judge of the Superior Court, except that the Executive Officer (if initially hired after October 1, 1997) shall be eligible for retirement under subchapter III of Chapter 15 when the Executive Officer has completed 7 years of service as Executive Officer, whether continuous or not.

(July 29, 1970, 84 Stat. 510, Pub. L. 91-358, title I, § 111; Oct. 30, 1984, 98 Stat. 3142, Pub. L. 98-598, § 3; Oct. 28, 1986, 100 Stat. 3328, Pub. L. 99-573, § 3; June 13, 1994, Pub. L. 103-266, § 1(b)(82), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 755, Pub. L. 105-33, § 11246(c).)

Prior Codifications. — 1981 Ed., § 11-1703.

1973 Ed., § 11-1703.

References in text. — "The effective date of

this Act," referred to in subsection (c), is October 28, 1986.

CASE NOTES

ANALYSIS

In general.

Purpose.

In general.

Administrative assistant to executive officer of District of Columbia Courts was explicitly included within excepted service classification, which consists of positions of confidential or policy determining character; thus, executive officer was not covered by merit personnel system, but instead, served at pleasure of official who appointed him, was entitled to no job tenure or job protection, and had no substantive or procedural rights in connection with his

employment. *Romansky v. Polansky*, 466 A.2d 1253, 1983 D.C. App. LEXIS 498 (1983).

Purpose.

Statutory provisions governing administration of District of Columbia Court system, appointment of nonjudicial personnel, responsibilities of chief judges, and executive officers of courts were intended to permit executive officer to exercise day-to-day control over nonjudicial personnel, while authorizing, but not mandating, joint committee or chief judges to review executive officer's appointments and terminations. D.C. Code 1981, §§ 11-1701 to 11-1703, 11-1725, 11-1725(a, b). *Romansky v. Polansky*, 466 A.2d 1253, 1983 D.C. App. LEXIS 498 (1983).

§ 11-1704. Oath of the Executive Officer.

The Executive Officer shall take an oath or affirmation for the faithful and impartial discharge of the duties of that office.

(July 29, 1970, 84 Stat. 510, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(83), 108 Stat. 713; Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 329; Oct. 16, 2006, 120 Stat. 2026, Pub. L. 109-356, § 116(a).)

Prior Codifications. — 1981 Ed., § 11-1704.

1973 Ed., § 11-1704.

Effect of amendments. — Pub. L. 108-335 repealed subsec. (b) which had read as follows: "(b) The Executive Officer shall give bond, with two or more sureties, to be approved by the Joint Committee, in an amount prescribed by the Joint Committee, faithfully to discharge the duties of that office."

Pub. L. 109-356 made a technical correction to Pub. L. 108-335 that deleted the subsec. (a) designation.

Effective date. — Section 116(c) of Pub. L. 109-356 provided that the amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005 [Pub. L. 108-335].

Subchapter II. Court Personnel.

§ 11-1721. Clerks of courts.

The District of Columbia Court of Appeals and the Superior Court shall each have a clerk who shall perform such duties as may be assigned to the clerk.

(July 29, 1970, 84 Stat. 510, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(84), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-1721.

1973 Ed., § 11-1721.

§ 11-1722. Director of Social Services.

(a) There shall be a Director of Social Services in the Superior Court who shall have charge of all juvenile social services for the Superior Court. The Director shall have no jurisdiction over any adult under supervision. With respect to juveniles, the Director shall provide intake procedures, counseling, education and training programs, probation services, and such other services as the court shall prescribe.

(b) To the maximum extent feasible, the Director shall coordinate with and utilize the services of appropriate public and private agencies within the District of Columbia, including the agency established by section 11233(a) of the National Capital Revitalization and self-government [Self-Government] Improvement Act of 1997 [D.C. Official Code § 24-133(a)], and shall coordinate and provide administrative services to volunteers utilized by the Superior Court or any divisions thereof.

(c) As directed by the Executive Officer, the Director shall conduct studies and make reports relating to the utilization of juvenile social services as an adjunct to the Superior Court.

(d) The Director shall make recommendations with respect to the consolidation or disposition of causes before the court relating to members of the same family or household.

(July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(85), 108 Stat. 713; Oct. 21, 1998, 112 Stat. 2681-147, Pub. L. 105-277, § 158(b); Dec. 21, 2001, 115 Stat. 928, Pub. L. 107-96, par. 18.)

Cross references. — Additional powers of the Director of Social Services, see § 16-2337.

Prior Codifications. — 1981 Ed., § 11-1722.

1973 Ed., § 11-1722.

Effect of amendments. — Pub. L. 107-96, in subsec. (a), deleted “, subject to the supervision of the Executive Officer” following “for the Superior Court” in the first sentence.

§ 11-1723. Fiscal Officer.

(a) There shall be a Fiscal Officer in the District of Columbia court system who shall be responsible for the budget of the court system and for the accounts of the courts, subject to the supervision of the Executive Officer.

(b) The Fiscal Officer shall receive, safeguard, and account for all fees, costs, payments, and deposits of money or other items, and shall be responsible for depositing in the Treasury of the United States all fines, forfeitures, fees, unclaimed deposits, and other moneys.

(c) The Fiscal Officer shall be responsible for the approval of vouchers and shall arrange for an annual independent audit of the accounts of the courts.

(July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(86), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 752, Pub. L. 105-33, § 11242(b); Dec. 21, 2001, 115 Stat. 928, Pub. L. 107-96, par. 18; Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 329; Oct. 16, 2006, 120 Stat. 2027, Pub. L. 109-356, § 116(a).)

Prior Codifications. — 1981 Ed., § 11-1723.

1973 Ed., § 11-1723.

Effect of amendments. — Pub. L. 107-96 deleted “and the internal auditing of the accounts of the courts” following “vouchers” in subsec. (a), par. (3).

Pub. L. 108-335 repealed subsec. (b) which had read as follows: (b) “The Fiscal Officer shall give bond with two or more sureties, to be approved by the Joint Committee, in an

amount prescribed by the Joint Committee, faithfully to discharge the duties of that office.”

Pub. L. 109-356 made a technical correction to Pub. L. 108-335 that deleted paragraph designation (1) in subsec. (a) and redesignated pars. (a)(2) and (3) as subsecs. (b) and (c).

Effective date. — Section 116(c) of Pub. L. 109-356 provided that the amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005 [Pub. L. 108-335].

§ 11-1724. Auditor-Master.

There shall be an Auditor-Master of the Superior Court who shall (1) execute orders of reference referred by the Superior Court and perform duties in connection with the execution of such orders in accordance with Rule 53 of the Federal Rules of Civil Procedure or other applicable rule, and (2) perform such other functions as may be assigned by the Superior Court.

(July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 5(a); June 13, 1994, Pub. L. 103-266, § 1(b)(87), 108 Stat. 713; Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 329; Oct. 16, 2006, 120 Stat. 2027, Pub. L. 109-356, § 116(a).)

Prior Codifications. — 1981 Ed., § 11-1724.

1973 Ed., § 11-1724.

Effect of amendments. — Pub. L. 108-335 deleted the second and third sentences in the section which had read as follows: “The Auditor-Master shall give bond faithfully to discharge the duties of that office. The bond shall have two or more sureties to be approved by the chief judge of the Superior Court, and shall be in an amount prescribed by the chief judge.”

Pub. L. 109-356 made a technical correction to Pub. L. 108-335 that did not change the text of the section.

Effective date. — Section 116(c) of Pub. L. 109-356 provided that the amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005 [Pub. L. 108-335].

CASE NOTES

In general.

Court’s order stating “the following issues are hereby referred to office of the Auditor-Master” did not order master to perform or not perform any particular function with regard to the issues, and it was thus appropriate for master to hold hearings, review exhibits, find facts relevant to the issues referred to him, and draw conclusion of law where necessary for factual determination. *House of Wines, Inc. v. Sumter*, 510 A.2d 492, 1986 D.C. App. LEXIS 340 (1986).

Order which referred to master the issue of the value of wines transferred by investors to a wholesaler, the amount of the proceeds realized by sale through the wholesaler, the amount of proceeds received by the wholesaler, and the amount of proceeds received by the investors or their agents authorized master to make findings that the wholesaler had commingled the

investor’s wines with other wines, that the wholesaler’s president had admitted that he kept no records pertaining to the sales and deliveries, that the wholesaler failed to properly keep certain records, and that there were inaccuracies in other records. *House of Wines, Inc. v. Sumter*, 510 A.2d 492, 1986 D.C. App. LEXIS 340 (1986).

Defendant’s rights were not affected by improper introduction of master’s summary of testimony into evidence, where jury heard six days of testimony which was duplicative of key testimony heard by master and jury’s verdict rejected one of master’s conclusions. *House of Wines, Inc. v. Sumter*, 510 A.2d 492, 1986 D.C. App. LEXIS 340 (1986).

Any error arising out of admission at trial of master’s conclusion and recommendation on liability was harmless, where jury’s verdict in favor of plaintiffs was in amount \$5,000 less

than recommended by master. House of Wines, Inc. v. Sumter, 510 A.2d 492, 1986 D.C. App. LEXIS 340 (1986).

§ 11-1725. Appointment of nonjudicial personnel.

(a) Subject to the approval of the Joint Committee, the Executive Officer shall appoint, and may remove, the Fiscal Officer, and such other personnel whose principal function is to perform duties for both District of Columbia courts.

(b) The Executive Officer shall appoint, and may remove, the Director of Social Services, the clerks of the courts, the Auditor-Master, and all other nonjudicial personnel for the courts (other than the Register of Wills and personal law clerks and secretaries of the judges) as may be necessary, subject to —

(1) regulations approved by the Joint Committee; and

(2) the approval of the chief judge of the court to which the personnel are or will be assigned.

Appointments and removals of court personnel shall not be subject to the laws, rules, and limitations applicable to District of Columbia employees.

(July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; Aug. 5, 1997, 111 Stat. 752, Pub. L. 105-33, § 11242(c).)

Prior Codifications. — 1981 Ed., § 11-1725. 1973 Ed., § 11-1725.

CASE NOTES

ANALYSIS

In general.
Purpose.

In general.

Administrative assistant to executive officer of District of Columbia Courts was explicitly included within excepted service classification, which consists of positions of confidential or policy determining character; thus, executive officer was not covered by merit personnel system, but instead, served at pleasure of official who appointed him, was entitled to no job tenure or job protection, and had no substantive or procedural rights in connection with his employment. *Romansky v. Polansky*, 466 A.2d 1253, 1983 D.C. App. LEXIS 498 (1983).

Power of Joint Committee to delegate its

oversight authority to Executive Officer is neither expressly nor implicitly withheld under the Court Reorganization Act. *Romansky v. Polansky*, 110 WLR 2560 (Super. Ct. 1982).

Purpose.

Statutory provisions governing administration of District of Columbia Court system, appointment of nonjudicial personnel, responsibilities of chief judges, and executive officers of courts were intended to permit executive officer to exercise day-to-day control over nonjudicial personnel, while authorizing, but not mandating, joint committee or chief judges to review executive officer's appointments and terminations. D.C. Code 1981, §§ 11-1701 to 11-1703, 11-1725, 11-1725(a, b). *Romansky v. Polansky*, 466 A.2d 1253, 1983 D.C. App. LEXIS 498 (1983).

§ 11-1726. Compensation and benefits for court personnel.

(a) In the case of nonjudicial employees of the District of Columbia courts whose compensation is not otherwise fixed by this title, the Executive Officer shall fix the rates of compensation of such employees without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code. Any rates so

established shall be subject to the limitation on maximum pay in section 5382(a) of such title. In fixing the rates of compensation of nonjudicial employees under this section, the Executive Officer may be guided by the rates of compensation fixed for employees in the executive and judicial branches of the Federal Government or State or local governments occupying the same or similar positions or occupying positions of similar responsibility, duty, and difficulty.

(b)(1) Nonjudicial employees of the District of Columbia courts shall be treated as employees of the Federal Government solely for purposes of any of the following provisions of title 5, United States Code:

(A) Subchapter 1 of chapter 81 (relating to compensation for work injuries).

(B) Chapter 83 (relating to retirement).

(C) Chapter 84 (relating to the Federal Employees' Retirement System).

(D) Chapter 87 (relating to life insurance).

(E) Chapter 89 (relating to health insurance).

(F) Chapter 89A (relating to enhanced dental benefits).

(G) Chapter 89B (relating to enhanced vision benefits).

(H) Chapter 90 (relating to long-term care insurance).

(2) The employing agency shall make contributions under the provisions referred to paragraph (1) [of this subsection] at the same rates applicable to agencies of the Federal Government.

(3) An individual who is a nonjudicial employee of the District of Columbia courts on the date of the enactment of the Balanced Budget Act of 1997 [August 5, 1997] may make, within 60 days after such date, an election under section 8351 or section 8432 of title 5, United States Code, to participate in the Thrift Savings Plan for Federal employees.

(c)(1) Judicial employees of the District of Columbia courts shall be treated as employees of the Federal Government for purposes of any of the following provisions of title 5, United States Code:

(A) Subchapter 1 of chapter 81 (relating to compensation for work injuries).

(B) Chapter 87 (relating to life insurance).

(C) Chapter 89 (relating to health insurance).

(D) Chapter 89A (relating to enhanced dental benefits).

(E) Chapter 89B (relating to enhanced vision benefits).

(F) Chapter 90 (relating to long-term care insurance).

(2) The employing agency shall make contributions under the provisions referred to paragraph (1) [of this subsection] at the same rates applicable to agencies of the Federal Government.

(3) For purposes of section 8706(b) and section 8901(3)(B) of title 5, United States Code, benefits paid from the retirement system for judicial employees of the District of Columbia courts or from the system providing benefits to survivors of such employees shall be considered an annuity.

(4) For purposes of section 8901(3)(A) of title 5, United States Code, the retirement system for judicial employees of the District of Columbia courts shall be considered a retirement system for employees of the Government.

(July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; Aug. 5, 1997, 111 Stat. 755, Pub. L. 105-33, § 11246(b)(1); Feb. 20, 2003, 117 Stat. 129, Pub. L. 108-7, Div. C, title III, § 138(b); Oct. 16, 2006, 120 Stat. 2024, 2027, Pub. L. 109-356, §§ 112(a), 117(b).)

Prior Codifications. — 1981 Ed., § 11-1726.

1973 Ed., § 11-1726.

Effect of amendments. — Section 138 of Public Law 108-7 added subsecs. (b)(1)(F) and (c)(1)(D).

Pub. L. 109-356, in the second sentence of subsec. (a), substituted “maximum pay in section 5382(a)” for “pay fixed by administrative action in section 5373”; in subsec. (b)(1), rewrote subpar. (F) and added subpars. (G) and (H); and, in subsec. (c)(1), rewrote subpar. (D) and added subpars. (E) and (F).

Effective date. — Section 11246(b)(3) of title XI of Pub. L. 105-33, 111 Stat. 755, provided that the amendments made by § 11246(b) shall apply with respect to all months beginning after the Dates on which the Director of the Office of Personnel Management issues regulations to carry out § 11-1726 (as amended by § 11246(b)(1)).

Section 112(b) of Pub. L. 109-356 provided that the amendment made by subsection (a) shall apply with respect to pay periods beginning on or after the date of the enactment of this Act [October 16, 2006].

CASE NOTES

In general.

Overtime pay provisions of Fair Labor Standards Act were not applicable to court reporters of Superior Court of District of Columbia. Fair Labor Standards Act of 1938, §§ 3(c, d, x), 7(a)(1), 16(b) as amended 29 U.S.C. §§ 203(c, d, x), 207(a)(1), 216(b); U.S. Const. art. 1, § 8, cl. 3; D.C. Code §§ 1-121 et seq., 1-121(a), 11-102, 11-1701, 11-1721 to 11-1731, 11-1727(a); Federal Employment Service Act, § 3, 29 U.S.C. § 49b. Association of Court Reporters of Superior Court v. Superior Court for District of Columbia, 424 F. Supp. 90, 1976 U.S. Dist. LEXIS 11801 (1976).

Statute requiring that Executive Officer of District of Columbia courts, in fixing compen-

sation rates of nonjudicial employees, shall be guided by rates of compensation for other employees in the federal and district governments does not exclude consideration of other possible pay raise factors. D.C. Code 1981, § 11-1726. Concerned Court Employees v. Polansky, 478 A.2d 1096, 1984 D.C. App. LEXIS 441 (1984).

Where Executive Officer of District of Columbia courts did predominately utilize federal and district pay raises in calculation of compensation for nonjudicial employees, his actions fulfilled requirements of statute that he be guided by federal and district pay raises. D.C. Code 1981, § 11-1726. Concerned Court Employees v. Polansky, 478 A.2d 1096, 1984 D.C. App. LEXIS 441 (1984).

§ 11-1727. Court reporters.

(a) The Executive Officer shall appoint reporters who shall be full-time employees of the courts. When necessary, the Executive Officer may contract for additional temporary reporting services. Nothing in this section shall be construed to preclude the Superior Court of the District of Columbia from providing by rule for the sound recording of proceedings in lieu of mechanical (audio or manual) transcription in any branch, division or courtroom of the court. Court reporters, shall, in addition to being subject to the general supervision of the Executive Officer, be subject to the supervision of the chief judges of the courts and of the other District of Columbia judges for whom they perform services, regarding the performance of their duties in the respective courts.

(b) In addition to their annual salaries, court reporters may charge and collect from parties, including the United States and the District of Columbia, who request transcripts of the original records of proceedings, only such fees as may be prescribed from time to time by the Executive Officer. The reporters

shall furnish all supplies at their own expense. The Executive Officer shall prescribe such rules, practice, and procedure pertaining to fees for transcripts as the Executive Officer deems necessary, conforming as nearly as practicable to the rules, practice, and procedure established for the United States District Court for the District of Columbia. A fee may not be charged or taxed for a copy of a transcript delivered to a judge at the judge's request or for copies of a transcript delivered to the clerk of a court for the records of the court. Except as to transcripts that are to be paid for by the United States or the District of Columbia, the reporters may require a party requesting a transcript to prepay the estimated fee therefor in advance of delivery of the transcript.

(July 29, 1970, 84 Stat. 512, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(88), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-1727. 1973 Ed., § 11-1727.

CASE NOTES

ANALYSIS

Applicability of Fair Labor Standards Act.
In general.

Applicability of Fair Labor Standards Act.

Overtime pay provisions of Fair Labor Standards Act were not applicable to court reporters of Superior Court of District of Columbia. Fair Labor Standards Act of 1938, §§ 3(c, d, x), 7(a)(1), 16(b) as amended 29 U.S.C. §§ 203(c, d, x), 207(a)(1), 216(b); U.S. Const. art. 1, § 8, cl. 3; D.C. Code §§ 1-121 et seq., 1-121(a), 11-102, 11-1701, 11-1721 to 11-1731, 11-1727(a); Federal Employment Service Act, § 3, 29 U.S.C. § 49b. Association of Court Reporters of Superior Court v. Superior Court for District of Columbia, 424 F. Supp. 90, 1976 U.S. Dist. LEXIS 11801 (1976).

In general.

Complaint by court reporters of District of Columbia courts presented problems capable of resolution through administrative processes of

that court or available grievance procedures and it was appropriate to apply abstention doctrine so as to avoid needless conflict and intrusion into management of daily and routine affairs of superior court. D.C. Code §§ 1-121 et seq., 1-121(a), 11-102, 11-1701, 11-1721 to 11-1731, 11-1727(a); 5 U.S.C. §§ 5542, 6101(a)(1). Association of Court Reporters of Superior Court v. Superior Court for District of Columbia, 424 F. Supp. 90, 1976 U.S. Dist. LEXIS 11801 (1976).

Allegations by District of Columbia court reporters that supervisors and executive officer harassed, intimidated and threatened reporters and otherwise blocked their efforts to unionize and seek redress of their complaints and grievances were sufficient to warrant opportunity for submission of proof. U.S. Const. Amend. 1; 5 U.S.C. §§ 5542, 6101(a)(1); D.C. Code §§ 1-121 et seq., 1-121(a), 11-102, 11-1701, 11-1721 to 11-1731, 11-1727(a). Association of Court Reporters of Superior Court v. Superior Court for District of Columbia, 424 F. Supp. 90, 1976 U.S. Dist. LEXIS 11801 (1976).

§ 11-1728. Recruitment and training of personnel and travel.

(a) The Executive Officer shall be responsible for recruiting such qualified personnel as may be necessary for the District of Columbia Courts and for providing in-service training for court personnel.

(b) Travel under Federal supply schedules is authorized for the travel of court personnel on official business. The joint committee shall prescribe such requirements, conditions and restrictions for such travel as it considers appropriate, and shall include policies and procedures for preventing abuses of that travel authority.

(July 29, 1970, 84 Stat. 512, Pub. L. 91-358, title I, § 111; Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 330.)

Prior Codifications. — 1981 Ed., § 11-1728.

1973 Ed., § 11-1728.

Effect of amendments. — Pub. L. 108-335 rewrote the section which had read as follows:

“§ 11-1728. Recruitment and training of personnel.

“The Executive Officer shall be responsible for recruiting such qualified personnel as may be necessary for the District of Columbia courts and for providing in-service training for court personnel.”

§ 11-1729. Service of United States marshal.

The United States Marshal for the District of Columbia shall continue to serve the courts of the District of Columbia, subject to the supervision of the Attorney General of the United States.

(July 29, 1970, 84 Stat. 512, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-1729.

1973 Ed., § 11-1729.

CASE NOTES

ANALYSIS

Actions under color of law.
Authority of district.

Actions under color of law.

Former United States Marshal for Superior Court of District of Columbia was federal official not amenable to suit, under §§ 1983, as employee, servant, agent, or actor under control of District of Columbia, precluding female former arrestees' class action, claiming violations of Fourth and Fifth Amendments by marshal's strip searches of all female arrestees awaiting presentment to superior court judge, without reasonable and particularized suspicion that any female was carrying contraband on her person and without strip searching any male arrestees, since marshal was empowered to act under color of federal Anti-Drug Abuse Act, creating office of and providing authority to Superior Court Marshal, and District of Columbia law provided that marshal acted under supervision of United States Attorney General. *Johnson v. District of Columbia*, 584 F.Supp.2d 83, 2008 U.S. Dist. LEXIS 106722 (2008), dis-

missed by 780 F. Supp. 2d 62, 2011 U.S. Dist. LEXIS 43390 (D.D.C. 2011).

Authority of district.

District of Columbia lacked authority to control conduct of former United States Marshal for Superior Court of District of Columbia, in conducting strip searches of all female arrestees awaiting presentment to superior court judge, without reasonable and particularized suspicion that any female was carrying contraband on her person and without strip searching any male arrestees, precluding female former arrestees' class action, under §§ 1983, claiming that District of Columbia violated Fourth and Fifth Amendments by acting in concert with marshal and entrusting arrestees to marshal's custody, since marshal was federal official in exclusive control of handling arrestees, marshal derived authority from federal Anti-Drug Act, not District of Columbia law, and District of Columbia lacked status of state and had no choice but to turn over arrestees to marshal pursuant to Anti-Drug Act. *Johnson v. District of Columbia*, 584 F.Supp.2d 83, 2008 U.S. Dist. LEXIS 106722 (2008), dismissed by 780 F. Supp. 2d 62, 2011 U.S. Dist. LEXIS 43390 (D.D.C. 2011).

§ 11-1730. Reports of court personnel.

(a) Judges of the courts shall furnish time and attendance records pursuant to sections 11-709 and 11-909 to the respective chief judges, with a copy to the Executive Officer.

(b) All nonjudicial personnel of the courts shall furnish such reports and information to the Executive Officer as the Executive Officer shall request.

(July 29, 1970, 84 Stat. 512, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(89), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-1730. 1973 Ed., § 11-1730.

§ 11-1731. Reports of other personnel.

The Executive Officer or the chief judge may request such reports as may be necessary to the efficient administration of the courts from —

- (1) the United States Attorney for the District of Columbia,
- (2) the Corporation Counsel,
- (3) the United States Marshal for the District of Columbia,
- (4) the Commissioner [Mayor] of the District of Columbia,
- (5) the superintendent of any hospitals or institutions to which persons have been committed by the Superior Court,
- (6) the District of Columbia Public Defender Service,
- (7) the District of Columbia Bail Agency [District of Columbia Pre-trial Services Agency],
- (8) the District of Columbia Department of Corrections,
- (9) the Chief of the Metropolitan Police Department,
- (10) the District of Columbia Department of Public Health [Department of Health], and
- (11) the District of Columbia Department of Public Welfare [Department of Human Services].

These officials, agencies, and departments shall furnish such reports and information as may be requested pursuant to this section.

(July 29, 1970, 84 Stat. 513, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-1731.

1973 Ed., § 11-1731.

Editor's notes. — District of Columbia Bail Agency abolished: The District of Columbia Bail Agency was abolished and replaced by the District of Columbia Pre-trial Services Agency by the Act of September 27, 1978, Pub. L. 95-388.

Health Department abolished: The Health Department of the District of Columbia, including the office of the head thereof, was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 57 of the Board of Commissioners, dated June 30, 1953, and Reorganization Order No. 52, dated June 30, 1953, combined and redesignated Organization Order No. 141, dated February 11, 1964, established under the direction and control of a Commissioner, a Department of Public Health

headed by a Director, for the purpose of planning, implementing, and directing public health and hospital care programs, and for performing certain other allied medical and paramedical functions. The Anatomical Board was established under the direction and control of the Director of Public Health consisting of members as prescribed in the D. C. Code. The Order prior to redesignation abolished the previously existing Health Department, Gallinger Hospital, Glenn Dale Sanatorium, and the Anatomical Board and transferred their functions and positions to the new Department. The organization of the new Department was set out in the Order. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Functions stated in Organization Order No. 141 were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969,

as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by Reorganization Plan No. 2 of 1979, dated February 21, 1980, which Plan established the Department of Human Services.

Board of Public Welfare abolished: The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. The executive functions of the Board of Commissioners were transferred to the Commissioner of the District of Columbia by § 401 of Reorganization Plan No. 3 of 1967. Reorganization Order No. 58 as amended, redesignated as Organization Order No. 140 and amended, established under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing and directing public welfare programs. Reorganization Order No. 58 provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former board to the Department of Public Health and the Department of Public Welfare. Functions of the

Department of Public Welfare and of the Department of Public Health as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Director of the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1732. Magistrate judges.

(a) With the approval of a majority of the judges of the Superior Court of the District of Columbia in active service and subject to standards and procedures established by the rules of the Superior Court, the chief judge of the Superior Court may appoint magistrate judges, who shall serve in the Superior Court and perform the duties enumerated in subsection (j) of this section (or, in the case of magistrate judges for the Family Court or the Domestic Violence Unit of the Superior Court, the duties enumerated in section 11-1732A(d)) and such other functions incidental to these duties as are consistent with the rules of the Superior Court and the Constitution and laws of the United States and of the District of Columbia.

(b) Magistrate judges shall be selected pursuant to standards and procedures adopted by the Board of Judges. Such procedures shall contain provisions for public notice of all vacancies in magistrate judge positions and for the establishment by the Court of an advisory merit selection panel, composed of lawyer and nonlawyer residents of the District of Columbia who are not employees of the District of Columbia Courts, to assist the Board of Judges in identifying and recommending persons who are best qualified to fill such positions.

(c) Except as provided in section 11-1732A(b), no individual shall be appointed as a magistrate judge unless that individual —

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar and has been engaged in the active practice of law in the District for the five years immediately preceding the appointment or for such five years has been on the

faculty of a law school in the District, or has been employed as a lawyer by the United States or District government; and

(3) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least ninety days immediately prior to appointment, and retains such residency during service as a magistrate judge, except that magistrate judges appointed prior to the effective date of this section shall not be required to be residents of the District to be eligible to be appointed to one of the initial terms under this section or to be reappointed.

(d) Magistrate judges shall be appointed for terms of four years and may be reappointed for terms of four years. Those individuals serving as magistrate judges on the effective date of this Act shall be automatically appointed for a four year term.

(e) Upon the expiration of a magistrate judge's term, the magistrate judge may continue to perform the duties of office until a successor is appointed, or for 90 days after the date of the expiration of the hearing commissioner's term, whichever is earlier.

(f) No individual may serve as a magistrate judge under this section after having attained the age of seventy-four.

(g) The Board of Judges may suspend, involuntarily retire, or remove a magistrate judge, during the term for which the magistrate judge is appointed, only for incompetence, misconduct, neglect of duty, or physical or mental disability. Suspension, involuntary retirement, or removal requires the concurrence of a majority of the judges in active service. Before any order of suspension, involuntary retirement, or removal shall be entered, a full specification of the charges and the opportunity to be heard shall be furnished to the magistrate judge pursuant to procedures established by rules of the Superior Court.

(h) If the Board of Judges determines that a magistrate judge position is not needed, the Board of Judges may terminate the position.

(i)(1) Magistrate judges may not engage in the practice of law, or in any other business, occupation, or employment inconsistent with the expeditious, proper, and impartial performance of their duties as officers of the court.

(2) Magistrate judges shall abide by the Canons of Judicial Ethics.

(j) A magistrate judge, when specifically designated by the chief judge of the Superior Court, and subject to the rules of the Superior Court and the right of review under subsection (k), may perform the following functions:

(1) Administer oaths and affirmations and take acknowledgements;

(2) Determine conditions of release pursuant to the provisions of Title 23 of the District of Columbia Official Code (relating to criminal procedure);

(3) Conduct preliminary examinations and initial probation revocation hearings in all criminal cases to determine if there is probable cause to believe that an offense has been committed and that the accused committed it;

(4)(A) In any case brought under § 11-1101(1), (3), (10), or (11) of the District of Columbia Official Code involving the establishment or enforcement of child support, or in any case seeking to modify an existing child support order, where a magistrate judge in the Family Division of the Superior Court

finds that there is an existing duty of support, the magistrate judge shall conduct a hearing on support, make findings, and enter judgment as provided by law, and in accordance with guidelines established by rule of the Superior Court, which judgment shall constitute a final order of the Superior Court.

(B) If in a case under paragraphs [*paragraph*] (A), the magistrate judge finds that a duty of support exists and makes a finding that the case involves complex issues requiring judicial resolution, the magistrate judge shall establish a temporary support obligation and refer unresolved issues to a judge of the Superior Court.

(C) In cases under subparagraphs (A) and (B) in which the magistrate judge finds that there is a duty of support and the individual owing that duty has been served or given notice of the proceeding under any applicable statute or court rule, if that individual fails to appear or otherwise respond, the magistrate judge shall enter a default order, which shall constitute a final order of the Superior Court;

(5) Subject to the rules of the Superior Court and with the consent of the parties involved, make findings and enter final orders or judgments in other uncontested or contested proceedings, in the Civil, Criminal, and Family Divisions of the Superior Court, excluding jury trials and trials of felony cases.

(k) With respect to proceedings and hearings under paragraphs (2), (3), (4), and (5) of subsection (j) (or proceedings and hearings under section § 11-1732A(d), in the case of magistrate judges for the Family Court or the Domestic Violence Unit of the Superior Court), a review of the magistrate judge's order or judgment, in whole or in part, may be made by a judge of the appropriate division (or, in the case of an order or judgment of a magistrate judge of the Family Court or the Domestic Violence Unit of the Superior Court, by a judge of the Family Court or the Domestic Violence Unit) *sua sponte* and must be made upon a motion of one of the parties made pursuant to procedures established by rules of the Superior Court. The reviewing judge shall conduct such proceedings as required by the rules of the Superior Court. An appeal to the District of Columbia Court of Appeals may be made only after a judge of the Superior Court has reviewed the order or judgment.

(l) The Superior Court shall ensure that all magistrate judges receive training to enable them to fulfill their responsibilities (subject to the requirements of section 11-1732A(f) in the case of magistrate judges of the Family Court of the Superior Court or the Domestic Violence Unit).

(m)(1) The chief judge of the Superior Court, in consultation with the District of Columbia Bar, the City Council of the District of Columbia, and other interested parties, shall within one year of the effective date of this section, make a careful study of conditions in the Superior Court to determine —

(A) the number of appointments required to provide for the effective administration of justice;

(B) the divisions in which hearing commissioners shall serve;

(C) the appropriate functions of hearing commissioners; and

(D) the compensation of, and other personnel matters pertaining to, hearing commissioners.

Upon completion of the study, the chief judge shall report the findings of such study to the appropriate committees of the Congress.

(2) After the study required by paragraph (1), the chief judge shall, from time to time, make such studies as the Board of Judges shall deem expedient, giving consideration to suggestions of the District of Columbia Bar and other interested parties.

(n) With the concurrence of the District of Columbia Court of Appeals, the Board of Judges of the Superior Court may promulgate rules, not inconsistent with the terms of this section, which are necessary for the fair and effective utilization of magistrate judges in the Superior Court.

(o) For purposes of this section, the term "Board of Judges" means the judges of the Superior Court of the District of Columbia. Any action of the Board of Judges shall require a majority vote of the sitting judges.

(Sept. 10, 1982, 96 Stat. 818, Pub. L. 97-257; July 29, 1983, 97 Stat. 301, Pub. L. 98-63, § 2; Oct. 12, 1984, 98 Stat. 1837, Pub. L. 98-473, § 101(b); Dec. 19, 1985, 99 Stat. 1224, Pub. L. 99-190, § 101(c); Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 2(a); Jan. 8, 2002, 115 Stat. 2112, Pub. L. 107-114, §§ 5(a)(1), 6(b).)

Prior Codifications. — 1981 Ed., § 11-1732.

Effect of amendments. — Pub. L. 107-114 substituted "Magistrate judges" for "Hearing commissioners" in the section heading; substituted "magistrate judges" for "hearing commissioners" in subsecs. (a), (b), (d), (i), (l), and (n); substituted "magistrate judge" for "hearing commissioner" in subsecs. (b), (c), (e), (f), (g), (h), and (j); substituted "magistrate judges" for "hearing commissioners" in subsecs. (e) and (k); substituted "Magistrate judges" for "Hearing commissioners" in subsecs. (b), (d), and (i); in subsec. (a), inserted "(or, in the case of magistrate judges for the Family Court or the Domestic Violence Unit of the Superior Court, the duties enumerated in section 11-1732A(d))" after "the duties enumerated in subsection (j) of this section"; in subsec. (c), substituted "Except as provided in section 11-1732A(b), no individual" for "No individual"; in subsec. (k), substituted "subsection (j) (or proceedings and hearings under section 11-1732A(d), in the case of magistrate judges for the Family Court or the Domestic Violence Unit of the Superior Court)," for "subsection (j),", and inserted "(or, in the case of an order or judgment of a magistrate judge of the Family Court or the Domestic Violence Unit of the Superior Court, by a judge of the Family Court or the Domestic Violence Unit)" after "appropriate division"; and, in subsec. (l), inserted "(subject to the require-

ments of section 11-1732A(f) in the case of magistrate judges of the Family Court of the Superior Court or the Domestic Violence Unit)" after "responsibilities".

References in text. — "The effective date of this Act," referred to in subsection (d), is October 28, 1986. "The effective date of this section," referred to in the introductory language of subsection (m)(1), is October 28, 1986.

Editor's notes. — In subsection (j)(4)(B) the bracketed word is set out to correct an error in Pub. Law 99-573.

Section 5(b) of Pub. L. 107-114 provided:

"(b) **TRANSITION PROVISION REGARDING HEARING COMMISSIONERS.**—Any individual serving as a hearing commissioner under section 11-1732 of the District of Columbia Code as of the date of the enactment of this Act Jan. 8, 2002 shall serve the remainder of such individual's term as a magistrate judge, and may be reappointed as a magistrate judge in accordance with section 11-1732(d), District of Columbia Code, except that any individual serving as a hearing commissioner as of the date of the enactment of this Act who was appointed as a hearing commissioner prior to the effective date of section 11-1732 of the District of Columbia Code shall not be required to be a resident of the District of Columbia to be eligible to be reappointed."

Section 6(d)(2) of Pub. L. 107-114 provided for expedited initial appointments.

CASE NOTES

ANALYSIS

Child support guidelines.

Finality of orders.

In general.

Jurisdiction.

Juvenile delinquency and dependency proceedings.

Pretrial release conditions.

Trial court review.

Child support guidelines.

The Child Support Guideline was lawfully adopted. *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989).

Subsection (j)(4)(A) constitutes a specific delegation of authority to the Superior Court to adopt a rule setting forth guidelines. As such, it would prevail over the general jurisdictional provision of § 11-946. *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989).

A commissioner's opinion such as a belief that the guideline is not supported by adequate economic data does not relieve him from his duty to apply it. *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989).

Subsection (j)(4)(A) of this section and the identical provision in Super. Ct. Gen. Fam. R. D. make it abundantly clear that Superior Court hearing commissioners have no choice regarding whether to utilize the Child Support Guidelines in ruling on motions to modify child support orders. Application of the Guideline by the commissioners is mandatory. *G.L.M. v. E.H.S.*, 117 WLR 1161 (Super. Ct. 1989).

Finality of orders.

Superior Court judge's order vacating sentence and remanding to Superior Court hearing commissioner for resentencing, on ground that commissioner was required to consider defendant's prior convictions, was not requisite "review" which would permit defendant to appeal hearing commissioner's resentencing decision to Court of Appeals; judge's order did not preordain result, but simply ruled that commissioner erred in his interpretation of law, and commissioner was required to do more than simply impose sentence. D.C. Code 1981, § 11-1732(k). *Bratcher v. United States*, 604 A.2d 858, 1992 D.C. App. LEXIS 60 (1992).

Superior Court judge's order remanding to Superior Court hearing commissioner for resentencing was itself not appealable; in criminal case, appeal may not be taken until after pronouncement of sentence. D.C. Code 1981, § 11-721(a)(1). *Bratcher v. United States*, 604 A.2d 858, 1992 D.C. App. LEXIS 60 (1992).

Hearing commissioner's findings and recommendations become final orders only after being "approved" by superior court judge. Crimi-

nal Rule 117(c). *Kwakyie v. District of Columbia*, 494 A.2d 643, 1985 D.C. App. LEXIS 406 (1985).

Order of superior court commissioner which dismissed information and which was not approved by trial judge was not a "final order," despite fact that trial judge stated that no approval was required, and thus, Court of Appeals lacked jurisdiction over appeal from the order. D.C. Code 1981, §§ 11-721(a), 11-1732, 11-1732(c); Criminal Rules 12(b), 117, 117(c). *District of Columbia v. Eck*, 476 A.2d 687, 1984 D.C. App. LEXIS 406 (1984).

In general.

District of Columbia Superior Court, acting through Board of Judges, had authority to promulgate Child Support Guideline as court rule, so long as judges and hearing commissioners continued to exercise their discretion to achieve equitable results consistent with existing law. Social Security Act, § 467, as amended, 42 U.S.C. § 667; D.C. Code 1981, § 11-1732(j)(4)(A), (n). *Fitzgerald v. Fitzgerald*, 566 A.2d 719, 1989 D.C. App. LEXIS 239 (1989).

Trial court has authority to adopt hearing commissioner's proposed findings, to modify them where necessary to correct error, or to rehear case. *Kwakyie v. District of Columbia*, 494 A.2d 643, 1985 D.C. App. LEXIS 406 (1985).

Jurisdiction.

Jurisdiction of properly designated hearing commissioners encompassed proceedings in small claims conciliation branch in 1988 as well as 1992; jurisdiction flowed directly from statute apart from rule governing powers and procedures of hearing commissioners, and rule's review procedures could be looked to as those most applicable within statute providing for review of hearing commissioner's order or judgment. Small Claims Rule 2; D.C. Code 1981, § 11-1732(a, j); Civil Rule 73(a-c). *Canada v. Management Partnership, Inc.*, 618 A.2d 715, 1993 D.C. App. LEXIS 2 (1993).

Court of Appeals lacked jurisdiction over defendant's appeal from Superior Court hearing commissioner's resentencing decision made after Superior Court judge vacated original sentence and remanded to commissioner upon finding that commissioner erred in failing to consider defendant's prior sentences; upon remand, commissioner was faced with range of possible courses of action and was required and empowered to do more than just impose sentence he actually imposed, only when he did so was matter ripe for review by Superior Court judge, and it was only after such review that appeal could be taken to Court of Appeals. D.C. Code 1981, § 11-1732(k). *Bratcher v. United*

States, 604 A.2d 858, 1992 D.C. App. LEXIS 60 (1992).

Appellate court had no jurisdiction to entertain appeal of hearing commissioner's finding and judgment in criminal matter which were not reviewed by superior court judge. D.C. Code 1981, § 11-1732(k). *Arlt v. United States*, 562 A.2d 633, 1989 D.C. App. LEXIS 147 (1989).

Appellate court was without jurisdiction to hear defendant's challenge to judgment of hearing commissioner's finding that defendant was guilty of soliciting for prostitution absent review of commissioner's order by Superior Court. D.C. Code 1981, §§ 11-1732, 22-2701; Criminal Rule 117(f)(1). *Speight v. United States*, 558 A.2d 357, 1989 D.C. App. LEXIS 96 (1989).

Although not coextensive with the grant of power in paragraph (j)(5) of this section, Superior Court Criminal Rule 117 allows commissioners to exercise jurisdiction in criminal matters where the maximum incarceration period is 90 days in jail and the maximum fine is \$300. *United States v. Esparza*, 124 WLR 1533 (Super. Ct. 1996).

In addition to the grant of jurisdiction to hear nonjury trials, this section, as implemented by Superior Court Criminal Rule 117, confers on commissioners the jurisdiction to hear ancillary matters. *United States v. Esparza*, 124 WLR 1533 (Super. Ct. 1996).

Juvenile delinquency and dependency proceedings.

Inasmuch as a juvenile probable cause hearing is not even truly adversarial in the first place, requiring only the barest presentation of evidence showing probable involvement by a juvenile, and which does not require "trial procedure," including cross-examination and discovery, it likewise does not necessitate the complicating application of all the rules of evidence or civil or criminal procedure, including the concept of "meaningful discovery." In re J.R., 123 WLR 1621 (Super. Ct. 1995).

Pretrial release conditions.

Superior Court magistrate judges fell within definition of "judicial officer" as that term was used in statute permitting "judicial officers" to set conditions of pretrial release; another statute expressly authorized magistrate judges to determine conditions of release. *Vest v. United States*, 834 A.2d 908, 2003 D.C. App. LEXIS 633 (2003).

Trial court review.

Amendment making it possible for hearing

commissioners to enter orders which are final for superior court purposes without further action by judge, did not eliminate requirement of review by superior court judge as intermediate step before any review by appellate court of proceedings before hearing commissioner. D.C. Code 1981, § 11-1732(k). *Arlt v. United States*, 562 A.2d 633, 1989 D.C. App. LEXIS 147 (1989).

Trial court review is prerequisite to its approval of hearing commissioner's findings and recommendations when objections are raised. *Kwakye v. District of Columbia*, 494 A.2d 643, 1985 D.C. App. LEXIS 406 (1985).

Requisite approval of hearing commissioner's proposed findings was not present where defendant did not present his objections to reviewing judge and in that judge could not meaningfully review any arguments without trial transcript. D.C. Code 1981, § 11-1732. *Kwakye v. District of Columbia*, 494 A.2d 643, 1985 D.C. App. LEXIS 406 (1985).

Party-initiated trial court review of hearing commission's recommended findings under § 11-1732 is prerequisite to appeal and must be on record sufficient to permit review of specific issues raised. D.C. Code 1981, § 11-1732. *Kwakye v. District of Columbia*, 494 A.2d 643, 1985 D.C. App. LEXIS 406 (1985).

Statute governing appointment of superior court commissioners contemplates approval by trial judge as prerequisite to finality of a hearing commissioner's merits ruling. D.C. Code 1981, §§ 11-1732, 11-1732(c); Criminal Rule 117. *District of Columbia v. Eck*, 476 A.2d 687, 1984 D.C. App. LEXIS 406 (1984).

A superior court commissioner's authority to dispose of criminal cases under rule which requires trial judge approval and adoption of a commissioner's findings and recommendations as to guilt and sentencing in nonjury criminal cases in which maximum confinement is 90 days or less and maximum fine does not exceed \$300 implies authority to hear pretrial dismissal motion; that authority, however, is necessarily limited by requirement that trial judge must approve and adopt, with implied power to reject, commissioner's ruling, if it purports to be final order. D.C. Code 1981, §§ 11-1732, 11-1732(c); Criminal Rules 12(b), 117, 117(c). *District of Columbia v. Eck*, 476 A.2d 687, 1984 D.C. App. LEXIS 406 (1984).

§ 11-1732A. Special rules for magistrate judges of the Family Court of the Superior Court and the Domestic Violence Unit.

(a) *Use of social workers in advisory merit selection panel.* — The advisory

selection merit panel used in the selection of magistrate judges for the Family Court of the Superior Court under section 11-1732(b) shall include certified social workers specializing in child welfare matters who are residents of the District and who are not employees of the District of Columbia Courts.

(b) *Special qualifications.* — Notwithstanding § 11-1732(c), no individual shall be appointed or assigned as a magistrate judge for the Family Court of the Superior Court or as a magistrate judge for the Domestic Violence Unit handling actions or proceedings which would otherwise be under the jurisdiction of the Family Court unless that individual—

(1) is a citizen of the United States;

(2) is an active member of the unified District of Columbia Bar;

(3) for the 5 years immediately preceding the appointment has been engaged in the active practice of law in the District, has been on the faculty of a law school in the District, or has been employed as a lawyer by the United States or District government, or any combination thereof;

(4) has not fewer than 3 years of training or experience in the practice of family law as a lawyer or judicial officer; and

(5)(A) is a bona fide resident of the District of Columbia and has maintained an actual place of abode in the District for at least 90 days immediately prior to appointment, and retains such residency during service as a magistrate judge; or

(B) is a bona fide resident of the areas consisting of Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties, and the City of Alexandria in Virginia, has maintained an actual place of abode in such area, areas, or the District of Columbia for at least 5 years prior to appointment, and certifies that the individual will become a bona fide resident of the District of Columbia not later than 90 days after appointment.

(c) *Service of current hearing commissioners.* — Those individuals serving as hearing commissioners under § 11-1732 on the effective date of this section [January 8, 2002], who meet the qualifications described in subsection (b)(4) may request to be appointed as magistrate judges for the Family Court of the Superior Court under such section.

(d) *Functions of Family Court and Domestic Violence Unit magistrates.* — A magistrate judge, when specifically designated by the chief judge in consultation with the appropriate presiding judge to serve in the Family Court or in the Domestic Violence Unit and subject to the rules of the Superior Court and the right of review under section 11-1732(k), may perform the following functions:

(1) Administer oaths and affirmations and take acknowledgements.

(2) Subject to the rules of the Superior Court and applicable Federal and District of Columbia law, conduct hearings, make findings and enter interim and final orders or judgments in uncontested or contested proceedings within the jurisdiction of the Family Court and the Domestic Violence Unit of the Superior Court (as described in section 11-1101), excluding jury trials and trials of felony cases, as assigned by the appropriate presiding judge.

(3) Subject to the rules of the Superior Court, enter an order punishing an individual for contempt, except that no individual may be detained pursuant to the authority of this paragraph for longer than 180 days.

(e) *Location of proceedings.* — To the maximum extent feasible, safe, and practicable, magistrate judges of the Family Court of the Superior Court shall conduct proceedings at locations readily accessible to the parties involved.

(f) *Training.* — The chief judge, in consultation with the presiding judge of the Family Court of the Superior Court, shall ensure that all magistrate judges of the Family Court receive training to enable them to fulfill their responsibilities, including specialized training in family law and related matters.

(Jan. 8, 2002, 115 Stat. 2113, Pub. L. 107-114, § 6(a).)

Subchapter III. Duties and Responsibilities.

§ 11-1741. Court operations and organization.

Within the respective District of Columbia courts, and subject to the supervision of the chief judges thereof, the Executive Officer shall —

(1) supervise, analyze, and improve case assignments, calendars, and dockets;

(2) provide improved services and introduce new methods to better utilize the time of and accommodate government and other witnesses;

(3) supervise, analyze, and improve the management of jurors;

(4) recommend changes and improvements in court rules and procedures affecting the Executive Officer's administrative responsibilities;

(5) report periodically to the appropriate chief judge with respect to case volumes, backlogs, length of time cases have been pending, number and identity of incarcerated defendants awaiting trial, and such other information as the respective chief judges may request;

(6) mechanize and computerize court operations and services where feasible and desirable and carry on continuing studies and evaluations of increased and innovative uses of mechanization and computerization;

(7) conduct studies and research with respect to court operations on the Executive Officer's own initiative or on request of the respective chief judges;

(8) make recommendations to the chief judge of the Superior Court relating to the arrangement and division of the business of that court and the fixing of the time of sessions of the various divisions and branches of that court; and

(9) perform such other duties as may be assigned to the Executive Officer by a chief judge.

(July 29, 1970, 84 Stat. 513, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(90), (91), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-1741. 1973 Ed., § 11-1741. 1741.

§ 11-1742. Property and disbursement.

(a) The Executive Officer shall be responsible, subject to the supervision of the Joint Committee, for the management of such buildings and space as may

§ 11-1742a ORGANIZATION AND JURISDICTION OF THE COURTS

be assigned to the courts and shall maintain liaison with the appropriate Federal and District of Columbia officials with respect thereto.

(b) The Executive Officer shall be responsible for the procurement of necessary equipment, supplies, and services for the courts and shall have power, subject to applicable law, to reimburse the District of Columbia government for services provided and to contract for such equipment, supplies, and services as may be necessary.

(c) The Executive Officer shall serve as disbursing officer and payroll officer of the District of Columbia courts and shall assign and distribute necessary equipment and supplies.

(July 29, 1970, 84 Stat. 513, Pub. L. 91-358, title I, § 111; Dec. 7, 1970, 84 Stat. 1390, Pub. L. 91-530, § 2(a)(7); Aug. 5, 1997, 111 Stat. 752, Pub. L. 105-33, § 11242(d).)

Prior Codifications. — 1981 Ed., § 11-1742. 1973 Ed., § 11-1742.

§ 11-1742a. Multiyear contracting authority and leasing agreements.

(a) *Severable services contracts for periods crossing fiscal years.* — The Executive Officer may enter into a contract for procurement of severable services in the same manner and to the same extent as the head of an executive agency may enter into such a contract under section 303L of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253l).

(b) *Multiyear leasing agreements.* —

(1) *Authority.* — The Executive Officer may enter into a lease agreement for the accommodation of the District of Columbia courts in a building which is in existence or being erected by the lessor to accommodate the District of Columbia courts.

(2) *Terms.* — A lease agreement under this subsection shall be on terms the Executive Officer considers to be in the interest of the Federal Government and the District of Columbia and necessary for the accommodation of the District of Columbia courts. However, the lease agreement may not bind the District of Columbia courts for more than 10 years and the obligation of amounts for a lease under this subsection is limited to the current fiscal year for which payments are due without regard to section 1341(a)(1)(B) of title 31, United States Code.

(c) *Multiyear contracts.* —

(1) *Authority.* — The Executive Officer may enter into a multiyear contract for the acquisition of property or services in the same manner and to the same extent as an executive agency may enter into such a contract under section 304B of title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. § 254c). In applying such authority—

(A) in section 304B(a)(2)(B)—

(i) “the best interests of the District of Columbia and the Federal Government” shall be substituted for “the best interests of the United States”; and

(ii) “the courts’ programs” shall be substituted for “the agency’s programs”;

(B) the second sentence of section 304B(b), and subsection (e), shall not apply; and

(C) in section 304B(c), “\$5,000,000” shall be substituted for “\$10,000,000”.

(2) *Cancellation or termination for insufficient funding after first year.* — In the event that funds are not made available for the continuation of a multiyear contract for services into a subsequent fiscal year, the contract shall be canceled or terminated, and the costs of cancellation or termination may be paid from—

(A) appropriations originally available for the performance of the contract concerned;

(B) appropriations currently available for procurement of the type of services concerned, and not otherwise obligated; or

(C) funds appropriated for those payments.

(Oct. 30, 2004, 118 Stat. 2229, Pub. L. 108-386, § 3.)

Effective date. — Section 9 of Pub. L. 108-386, 118 Stat. 2228, the 2004 District of Columbia Omnibus Authorization Act, provided: “The

amendments made by this section shall take effect on the date of the enactment of this Act.”

§ 11-1743. Annual budget and expenditures.

(a) The Joint Committee shall prepare and submit to the Mayor and the Council of the District of Columbia annual estimates of the expenditures and appropriations necessary for the maintenance and operations of the District of Columbia courts, and shall submit such estimates to Congress and the Director of the Office of Management and Budget after submitting them to the Mayor and the Council. All such estimates shall be included in the budget without revision by the President but subject to the President’s recommendations.

(b) The District of Columbia Courts may make such expenditures as may be necessary to execute efficiently the functions vested in the Courts.

(c) All expenditures of the Courts shall be allowed and paid upon presentation of itemized vouchers signed by the certifying officer designated by the Joint Committee. All such expenditures shall be paid out of moneys appropriated for purposes of the Courts.

(July 29, 1970, 84 Stat. 514, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(92), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 752, Pub. L. 105-33, § 11242(e)(1).)

Cross references. — District Charter provisions relating to budget of District of Columbia courts, see § 1-204.45.

Representation of indigents in criminal cases, preparation and submission of budget for furnishing, see § 11-2607.

Section references. — This section is referred to in § 11-2607.

Prior Codifications. — 1981 Ed., § 11-1743.

1973 Ed., § 11-1743.

Editor’s notes. — Authorization of Appro-

priations: For provisions regarding authorization of appropriations for District of Columbia Courts, see § 11241 of title XI of Pub. L. 105-33, 111 Stat. 751, the National Capital Revitalization and Self-Government Improvement Act of 1997.

Section 6(b)(1) and (c)(1) of Pub. L. 105-274, 112 Stat. 2425, amended § 11241 of title XI of Pub. L. 105-33, 111 Stat. 751, the National Capital Revitalization and Self-Government Improvement Act of 1997.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Colum-

bia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-1744. Information and liaison services.

The Executive Officer shall be responsible for —

(1) collecting and compiling statistical information with respect to the volume and disposition of the work of the courts and the personnel of the courts;

(2) printing and the distribution of court rules;

(3) keeping the courts advised of pending legislative and executive actions relating to the courts;

(4) serving as the public information officer of the courts; and

(5) performing such other duties as may be assigned to the Executive Officer by the Joint Committee and the chief judges in their respective courts.

(July 29, 1970, 84 Stat. 514, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(93), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-1744. 1973 Ed., § 11-1744.

§ 11-1745. Reports and records.

(a) The Executive Officer shall prepare and publish, subject to the approval of the Joint Committee, the annual report of the District of Columbia court system of the work of the courts and their operations during the preceding year together with any recommendations relating to the courts. The principal purpose of the annual report shall be to provide meaningful and objective information concerning the performance, progress, and problems of the District of Columbia courts. The report shall include narrative comments analyzing the significance of statistical data and shall show trends with regard to the work of such courts, current data on the age and type of pending cases, and methods of disposition of cases. Nothing in this chapter shall prevent the respective chief judges from preparing and publishing any other reports as they may wish.

(b) The Executive Officer shall be responsible for maintaining and safeguarding the records of the courts. Except for those records required by law to be kept under court seal, the Executive Officer shall make the records available at all reasonable times to —

(1) the United States Department of Justice,

- (2) the Mayor of the District of Columbia,
- (3) the District of Columbia Commission on Judicial Disabilities and Tenure, and
- (4) such other agencies as the Joint Committee may specify.

(July 29, 1970, 84 Stat. 514, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(94), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-1745. 1973 Ed., § 11-1745.

§ 11-1746. Certification of copies of papers or documents filed in District of Columbia courts.

The Executive Officer shall provide that, if any person filing any paper or document in a District of Columbia court requests a certification of such filing, a copy of such paper or document provided by such person shall be appropriately marked for such person to show the time and date of such filing and the identity of the individual with whom such paper or document was filed. Such certified copy shall be prima facie evidence in any proceeding that the original of such paper or document was filed as shown by the certification.

(July 29, 1970, 84 Stat. 515, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-1746. 1973 Ed., § 11-1746.

§ 11-1747. Delegation of authority.

The Executive Officer and court officers appointed by the Executive Officer may delegate to their subordinates authority and responsibility to perform the functions vested in them by law.

(July 29, 1970, 84 Stat. 515, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(95), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-1747.

1973 Ed., § 11-1747.

Editor's notes. — Revision of chapter: Pub. L. 99-650 revised this chapter effective 180 days from November 14, 1986. The revision retained subject matter, with amendments, set out in former §§ 11-1901, 11-1903, 11-1905 and

11-1906 in present §§ 11-1906, 11-1911, 11-1912, and 11-1916. No detailed explanation of the change made by the 1986 Act has been attempted, but, where appropriate, historical citations to the former sections have been added to corresponding sections in the revised chapter.

CHAPTER 19. JURIES AND JURORS.

Sec.

- 11-1901. Declaration of policy.
- 11-1902. Definitions.
- 11-1903. Prohibition of discrimination.
- 11-1904. Jury system plan.
- 11-1905. Master juror list.
- 11-1906. Qualification of jurors.
- 11-1907. Summoning of prospective jurors.
- 11-1908. Exclusion from jury service.
- 11-1909. Deferral from jury service.
- 11-1910. Challenging compliance with selection procedures.

Sec.

- 11-1911. Length of service.
- 11-1912. Juror fees.
- 11-1913. Protection of employment of jurors.
- 11-1914. Preservation of records.
- 11-1915. Fraud in the selection process.
- 11-1916. Grand jury; additional grand jury.
- 11-1917. Coordination and cooperation of courts.
- 11-1918. Effect of invalidity.

§ 11-1901. Declaration of policy.

A jury selection system is hereby established for the Superior Court of the District of Columbia. All litigants entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the residents of the District of Columbia. In accordance with the provisions of this chapter, all qualified individuals shall have the opportunity to be considered for service on grand and petit juries in the District of Columbia and shall be obligated to serve as jurors when summoned for that purpose.

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Section references. — This section is referred to in § 11-1908.

Prior Codifications. — 1981 Ed., § 11-1901.

Short title. — Short title: Section 1 of Public

Law 99-650 provided: "This Act may be cited as the 'District of Columbia Jury System Act'."

Editor's notes. — Board of Judges to have authority to promulgate and adopt plan: See § 4(b) of P.L. 99-650.

CASE NOTES

ANALYSIS

- Challenges to jurors.
- Construction with federal law.
- Eligibility.
- Equal protection.
- Fair cross section of the community.
- In general.
- Judicial notice.
- Presumptions and burden of proof.
- Review.
- Subpoenas.

Challenges to jurors.

In escape prosecution, trial judge did not abuse its discretion in rejecting defense counsel's request that, during individual interviews with each prospective juror during voir dire, judge ask question to jury concerning whether they or persons close to them have been accused of, victim of, or a witness to any crime without permitting juror to make determination on whether such experience affected juror's ability to be fair and impartial; while it might have

been appropriate to inquire to the prospective jurors' experience with the underlying offense, no such question was requested, and defense counsel was given full opportunity to ask any follow-up questions that counsel wished to explore. *Mills v. United States*, 796 A.2d 26, 2002 D.C. App. LEXIS 78 (2002).

The trial court, during voir dire, is under no obligation to inquire as to the jurors' experience with crimes of any type. *Mills v. United States*, 796 A.2d 26, 2002 D.C. App. LEXIS 78 (2002).

Although Federal Constitution guarantees only fair and impartial jury, free from actual bias or prejudice, juror's impartiality may not be assumed without inquiry, and proper occasion for such determination is upon voir dire examination. *Lewis v. Voss*, 770 A.2d 996, 2001 D.C. App. LEXIS 89 (2001).

Trial judge erred in accepting juror's ambiguous claim that she could be impartial for purposes of personal injury action brought by injured motorist; juror signaled doubts as to whether she could be fair and impartial, particularly based upon her reading of a book con-

cerning frivolous lawsuits and her "very unpleasant" experience as a defendant in a lawsuit, juror held views as to how tort system might benefit from overhaul, and judge asked no additional questions to make certain that she would not sit as a partial juror. *Lewis v. Voss*, 770 A.2d 996, 2001 D.C. App. LEXIS 89 (2001).

Defendant had a Sixth Amendment right during voir dire to pose follow-up questions to prospective jurors who had close friends or family members in the law enforcement field; the court's questions did not explore the relationship between the identified law enforcement person and the prospective juror, and the testimony of police officers and government experts played a substantial role in the case. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

The trial court has broad discretion in conducting voir dire examination. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

A potential juror's bias may be implied or presumed as a matter of law, as in the case of a potential juror who is related to a party in the case or may be inferred when a juror discloses a fact that bespeaks a risk of partiality sufficiently significant, such as a relationship with a prosecutor, to warrant granting the trial judge discretion to excuse the juror for cause, but not so great as to make mandatory a presumption of bias. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

A court is allowed to dismiss a juror on the ground of inferable bias only after having received responses from the juror that permit an inference that the juror in question would not be able to decide the matter objectively; in other words, the judge's determination must be grounded in facts developed at voir dire. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

To be meaningful, voir dire, whether in a capital case or in the more usual situation, must uncover more than the jurors' bottom line conclusions to broad questions which do not in themselves reveal automatically disqualifying biases as to their ability fairly and accurately to decide the case, and indeed, which do not elucidate the bases for those conclusions. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App.

LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Where potential jurors remain silent during voir dire in response to a general question regarding their ability to be fair and impartial despite their family or close relationships with persons in the law enforcement field, the trial judge has an obligation to probe further and to elicit more than a nod of the head or a simple "yes" or "no" response to ensure their impartiality and fairness as jurors. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Defendant was required to challenge qualification of juror at voir dire even though he did not learn of juror's Maryland residency until jury had begun its deliberations and, by failing to timely do so, waived his right to challenge composition of jury as deviating from requirement that jury represent a fair cross section of residents residing in community for one year. D.C. Code 1981, §§ 11-1901, 11-1902; 18 U.S.C. §§ 1861, 1865(b)(1), 1867(a). *Kingsbury v. United States*, 520 A.2d 686, 1987 D.C. App. LEXIS 277 (1987).

Construction with federal law.

Court of Appeals would not construe omission of sentence in District of Columbia Jury System Act (DCJSA) that was present in federal Jury Selection and Service Act (FJSSA), which was predecessor to DCJSA, stating that parties in a case "shall be allowed to inspect, reproduce, and copy such records or papers [relevant to a motion] at all reasonable times during the preparation and pendency of such a motion," so as to require satisfaction of threshold showing that movant for discovery under DCJSA had objective grounds from other sources to believe, or at least suspect, that court records would yield affirmative evidence of substantial failure to comply with DCJSA; Court would not presume Congress intended to remove rights by implication, and such qualification of right did not exist in FJSSA. *Gause v. United States*, 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (2010).

Eligibility.

Mere statutory ineligibility does not render a juror incapable of making an intelligent and impartial verdict. D.C. Code 1981, §§ 11-1901, 11-1902; 18 U.S.C. §§ 1861, 1865(b)(1), 1867(a). *Kingsbury v. United States*, 520 A.2d 686, 1987 D.C. App. LEXIS 277 (1987).

Technical ineligibility of a single juror does not satisfy relevant constitutional standards without a showing that defendant's right to a fair and impartial jury was actually prejudiced.

D.C. Code 1981, §§ 11-1901, 11-1902; 18 U.S.C. §§ 1861, 1865(b)(1), 1867(a); U.S. Const. Amend. 6. *Kingsbury v. United States*, 520 A.2d 686, 1987 D.C. App. LEXIS 277 (1987).

Equal protection.

As regards the fair cross section requirement for grand and petit juries, Spanish-surnamed persons are a cognizable class for equal protection purposes, but even that designation is a question of fact to be decided on a case-by-case basis by looking at the characteristics of the particular community in question. U.S. Const. Amends. 5, 14. *Oregon v. United States*, 423 A.2d 200, 1980 D.C. App. LEXIS 404 (1980), writ of certiorari denied by 452 U.S. 918, 101 S. Ct. 3054, 69 L. Ed. 2d 422, 1981 U.S. LEXIS 2426, 49 U.S.L.W. 3911 (1981).

Test for showing substantial underrepresentation of a particular group in grand and petit juries that violates equal protection is similar to fair cross section test, but also requires evidence of a discriminatory intent. U.S. Const. Amend. 5. *Oregon v. United States*, 423 A.2d 200, 1980 D.C. App. LEXIS 404 (1980), writ of certiorari denied by 452 U.S. 918, 101 S. Ct. 3054, 69 L. Ed. 2d 422, 1981 U.S. LEXIS 2426, 49 U.S.L.W. 3911 (1981).

Equal protection component of the Fifth Amendment protects against the discriminatory exclusion or substantial underrepresentation of persons from grand and petit juries based on race, sex, national origin, and the like. U.S. Const. Amend. 5. *Oregon v. United States*, 423 A.2d 200, 1980 D.C. App. LEXIS 404 (1980), writ of certiorari denied by 452 U.S. 918, 101 S. Ct. 3054, 69 L. Ed. 2d 422, 1981 U.S. LEXIS 2426, 49 U.S.L.W. 3911 (1981).

Fair cross section of the community.

The impaneling of a fair and impartial jury is the task of the trial judge. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

A prima facie violation of fair cross section requirement was not established by reason of presence on jury panel of a person who was not a resident of District of Columbia absent a showing as to a systematic exclusion of a distinctive group. D.C. Code 1981, §§ 11-1901, 11-1902; 18 U.S.C. §§ 1861, 1865(b)(1), 1867(a); U.S. Const. Amend. 6. *Kingsbury v. United States*, 520 A.2d 686, 1987 D.C. App. LEXIS 277 (1987).

Fundamental to the right to trial by an impartial jury is the right to have both grand and petit juries chosen from sources representing a fair cross section of the community. U.S. Const. Amends. 5, 6. *Oregon v. United States*,

423 A.2d 200, 1980 D.C. App. LEXIS 404 (1980), writ of certiorari denied by 452 U.S. 918, 101 S. Ct. 3054, 69 L. Ed. 2d 422, 1981 U.S. LEXIS 2426, 49 U.S.L.W. 3911 (1981).

Defendant who showed that a high comparative disparity existed over a long period of time between percentage of Spanish-surnamed persons in the community and those on grand jury venires and petit jury panels and that the underrepresentation probably did not happen by chance failed, without more, to show that the underrepresentation was due to systematic exclusion of the group in the jury selection process. U.S. Const. Amends. 5, 6. *Oregon v. United States*, 423 A.2d 200, 1980 D.C. App. LEXIS 404 (1980), writ of certiorari denied by 452 U.S. 918, 101 S. Ct. 3054, 69 L. Ed. 2d 422, 1981 U.S. LEXIS 2426, 49 U.S.L.W. 3911 (1981).

Defendant who showed that a high comparative disparity existed over a long period of time between percentage of Spanish-surnamed persons in the community and those on grand jury venires and petit jury panels and that the underrepresentation probably did not happen by chance did not without more, produce sufficient evidence of an impermissible system to support an inference of intentional discrimination. U.S. Const. Amend. 5. *Oregon v. United States*, 423 A.2d 200, 1980 D.C. App. LEXIS 404 (1980), writ of certiorari denied by 452 U.S. 918, 101 S. Ct. 3054, 69 L. Ed. 2d 422, 1981 U.S. LEXIS 2426, 49 U.S.L.W. 3911 (1981).

Source of the fair cross section requirement for grand juries is actually the Fifth Amendment right to an indictment by a grand jury, but the same constitutional principles apply to both grand and petit juries. U.S. Const. Amend. 5. *Oregon v. United States*, 423 A.2d 200, 1980 D.C. App. LEXIS 404 (1980), writ of certiorari denied by 452 U.S. 918, 101 S. Ct. 3054, 69 L. Ed. 2d 422, 1981 U.S. LEXIS 2426, 49 U.S.L.W. 3911 (1981).

Focal point for deciding whether jury selection system complies with statutory requirement that it not discriminate against potential jurors on the basis of race, color, religion, sex, national origin, or economic status, and that it utilize source lists representing a fair cross section of the community is not the actual jury that hears a case, nor necessarily the wheel from which juries are chosen; rather, it is the original source list from which the names are selected for potential service. 18 U.S.C. §§ 1861-1863. *Oregon v. United States*, 423 A.2d 200, 1980 D.C. App. LEXIS 404 (1980), writ of certiorari denied by 452 U.S. 918, 101 S. Ct. 3054, 69 L. Ed. 2d 422, 1981 U.S. LEXIS 2426, 49 U.S.L.W. 3911 (1981).

In general.

Under the District of Columbia Jury System Act (DCJSA), doubtful cases are to be resolved

in the defendant's favor, with respect to access to discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment. *Gause v. United States*, 959 A.2d 671, 2008 D.C. App. LEXIS 432 (2008), vacated by 968 A.2d 1032, 2009 D.C. App. LEXIS 58 (D.C. 2009), reaffirmed in part, rejected in part by 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (D.C. 2010).

Judicial notice.

District of Columbia Court of Appeals would take judicial notice that, in prior 12-month period, the criminal caseload in the District of Columbia Superior Court was substantially greater than that of a United States District Court, when the Court of Appeals was determining whether the standard, under the District of Columbia Jury System Act (DCJSA), for a defendant to obtain discovery of non-public jury information before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, differs from the standard under the Federal Jury Selection and Service Act (FJSSA). *Gause v. United States*, 959 A.2d 671, 2008 D.C. App. LEXIS 432 (2008), vacated by 968 A.2d 1032, 2009 D.C. App. LEXIS 58 (D.C. 2009), reaffirmed in part, rejected in part by 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (D.C. 2010).

Presumptions and burden of proof.

Under the District of Columbia Jury System Act (DCJSA), to obtain discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, a defendant must make a particularized showing supporting a reasonable belief that underrepresentation in the jury pool or the venire exists as the result of practices of systematic exclusion. *Gause v. United States*, 959 A.2d 671, 2008 D.C. App. LEXIS 432 (2008), vacated by 968 A.2d 1032, 2009 D.C. App. LEXIS 58 (D.C. 2009), reaffirmed in part, rejected in part by 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (D.C. 2010).

Review.

Trial court's decision to accept juror's ambiguous claim that she could be impartial despite her very unpleasant experience as a defendant in a lawsuit, and her attitudes toward tort reform and plaintiffs, did not constitute harmless error for purposes of personal injury action brought by injured motorist; court's decision resulted in substantial prejudice to motorist who had only three peremptory challenges, all of which were used, and damages verdict rendered by the jury was less than the actual

medical expenses and lost wages that were uncontested at trial. *Lewis v. Voss*, 770 A.2d 996, 2001 D.C. App. LEXIS 89 (2001).

Absent an abuse of discretion during voir dire and substantial prejudice to the accused, the trial court will be upheld. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

A harmless error standard applies to cases challenging the voir dire due to the refusal of the trial court to permit follow-up questions designed to weed out juror bias. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Erroneous refusal to permit the defendant during voir dire to pose follow-up questions to prospective jurors who had close friends or family members in the law enforcement field was harmless in prosecution for murder and drug offenses; the case depended heavily on the testimony of civilian witnesses, rather than that of law enforcement officers, and even if a juror with close friends working for the Department of Justice and the Parole Commission was biased in favor of law enforcement officers, that bias would not have affected jury deliberations and the verdict in light of the testimony by participants in the drug operation. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Inclusion of a disqualified juror on jury panel does not require reversal of a conviction unless there is a showing of actual prejudice; actual prejudice refers not to question of whether there was sufficient evidence to make a different outcome likely, but rather to issue whether defendant has effectively been denied his or her right to a jury trial. D.C. Code 1981, §§ 11-1901, 11-1902; 18 U.S.C. §§ 1861, 1865(b)(1), 1867(a). *Kingsbury v. United States*, 520 A.2d 686, 1987 D.C. App. LEXIS 277 (1987).

Statutory ineligibility of juror who was not a resident of District of Columbia could not reasonably have adversely affected juror's ability to decide case intelligently and, hence, failure to disqualify that juror was not prejudicial under Sixth Amendment so as to require reversal. D.C. Code 1981, §§ 11-1901, 11-1902; 18 U.S.C. §§ 1861, 1865(b)(1), 1867(a); U.S. Const. Amend. 6. *Kingsbury v. United States*, 520 A.2d 686, 1987 D.C. App. LEXIS 277 (1987).

Subpoenas.

Evidence was sufficient to establish, at hearing on defendants' motions for new trials, that

prosecutor's abuse of grand jury subpoena power by serving eyewitness with multiple subpoenas, conducting at least five interviews with witness before presenting witness to grand jury and paying witness fees each day witness came to prosecutor's office, did not lead to the subornation of perjured testimony at defendants' trial, in prosecution of defendants arising out of beating of homeless man and murder and assaults of passersby; though at trial witness testified reluctantly after being confronted with his grand jury testimony and witness subsequently recanted his testimony, witness's grand

jury testimony did not simply parrot what other witnesses had said, grand jury testimony had key indicia of truthfulness, and there was evidence that witness's blanket recantation was not credible and that defendants had intimidated other witnesses. *Perez v. United States*, 968 A.2d 39, 2009 D.C. App. LEXIS 57 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 474, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7527, 78 U.S.L.W. 3237 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 473, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7505, 78 U.S.L.W. 3237 (2009).

§ 11-1902. Definitions.

For purposes of this chapter, the following terms have the following meanings:

- (1) The term "Board of Judges" means the chief judge and the associate judges of the Superior Court of the District of Columbia.
- (2) The term "chief judge" means the chief judge of the Superior Court of the District of Columbia.
- (3) The term "clerk" means the clerk of the Superior Court of the District of Columbia or any deputy clerk.
- (4) The term "Court" means the Superior Court of the District of Columbia and may include any judge of the Court acting in an official capacity.
- (5) The term "juror" means (A) any individual summoned to Superior Court for the purpose of serving on a jury; (B) any individual who is on call and available to report to Court to serve on a jury upon request; and (C) any individual whose service on a jury is temporarily deferred.
- (6) The term "jury" includes a grand or petit jury.
- (7) The term "jury system plan" means the plan adopted by the Board of Judges of the Court, consistent with the provisions of this chapter, to govern the administration of the jury system.
- (8) The term "master juror list" means the consolidated list or lists compiled and maintained by the Board of Judges of the District of Columbia Courts which contains the names of prospective jurors for service in the Superior Court of the District of Columbia.
- (9) The term "random selection" means the selection of names of prospective jurors in a manner immune from the purposeful or inadvertent introduction of subjective bias, so that no recognizable class of the individuals on the list or lists from which the names are being selected can be purposefully or inadvertently included or excluded.
- (10) The term "resident of the District of Columbia" means an individual who has resided or has been domiciled in the District of Columbia for not less than six months.

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Prior Codifications. — 1981 Ed., § 11-1902.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

CASE NOTES

Resident of the District of Columbia.

Statutory ineligibility of juror who was not a resident of District of Columbia could not reasonably have adversely affected juror's ability to decide case intelligently and, hence, failure to disqualify that juror was not prejudicial under Sixth Amendment so as to require reversal. D.C. Code 1981, §§ 11-1901, 11-1902; 18 U.S.C. §§ 1861, 1865(b)(1), 1867(a); U.S. Const. Amend. 6. *Kingsbury v. United States*, 520 A.2d 686, 1987 D.C. App. LEXIS 277 (1987).

A prima facie violation of fair cross section requirement was not established by reason of presence on jury panel of a person who was not a resident of District of Columbia absent a showing as to a systematic exclusion of a distinctive group. D.C. Code 1981, §§ 11-1901, 11-1902; 18 U.S.C. §§ 1861, 1865(b)(1), 1867(a); U.S. Const. Amend. 6. *Kingsbury v. United States*, 520 A.2d 686, 1987 D.C. App. LEXIS 277 (1987).

§ 11-1903. Prohibition of discrimination.

A citizen of the District of Columbia may not be excluded or disqualified from jury service as a grand or petit juror in the District of Columbia on account of race, color, religion, sex, national origin, ancestry, economic status, marital status, age, or (except as provided in this chapter) physical handicap.

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Section references. — This section is referred to in § 11-1908.

Prior Codifications. — 1981 Ed., § 11-1903.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

CASE NOTES

ANALYSIS

Construction with other laws.

In general.

Judicial notice.

Peremptory strikes.

Presumptions and burden of proof.

Construction with other laws.

Blind persons could be "otherwise qualified" to sit on jury, so that District of Columbia superior court's policy of excluding all blind persons from jury duty violated Rehabilitation Act and Americans with Disabilities Act (ADA); uncontradicted evidence indicated that blind individuals, like sighted jurors, weigh content of testimony given and examine speech patterns, intonation, and syntax in assessing credibility, at least ten states prohibited exclusion of blind persons from juries solely on basis of their disability, there were several active judges who were blind and who presided over trials in which they were sole triers of fact, and superior court admitted deaf persons to jury panels. Rehabilitation Act of 1973, § 504(b)(1)(A), as amended, 29 U.S.C. § 794(b)(1)(A); Americans with Disabilities Act of 1990, §§ 201(1), 202, 42 U.S.C. §§ 12131(1), 12132. *Galloway v. Superior Court of Dist. of*

Columbia, 816 F. Supp. 12, 1993 U.S. Dist. LEXIS 3314 (1993).

In many instances, reasonable accommodation of blind individuals could result in individual "otherwise qualified" for jury service, so that District of Columbia superior court's policy of excluding all blind persons from jury duty violated Rehabilitation Act and Americans with Disabilities Act (ADA); blind persons were expressly informed that blind jurors could not be accommodated and services, similar to sign language interpreters provided by superior court for deaf jurors, could be employed for blind jurors. Rehabilitation Act of 1973, § 504(b)(1)(A), as amended, 29 U.S.C. § 794(b)(1)(A); Americans with Disabilities Act of 1990, §§ 201(1), 202, 42 U.S.C. §§ 12131(1), 12132. *Galloway v. Superior Court of Dist. of Columbia*, 816 F. Supp. 12, 1993 U.S. Dist. LEXIS 3314 (1993).

Rehabilitation Act, while prohibiting per se exclusion of blind persons from jury service, did not mandate per se rule of inclusion; there may be cases in which it would be inappropriate for blind juror to serve, and whether blind juror could serve competently should be addressed on case-by-case basis. Rehabilitation Act of 1973, § 504(b)(1)(A), as amended, 29 U.S.C. § 794(b)(1)(A). *Galloway v. Superior Court of*

Dist. of Columbia, 816 F. Supp. 12, 1993 U.S. Dist. LEXIS 3314 (1993).

District of Columbia Superior Court's policy of excluding all blind persons from jury service violated § 1983 as it violated Rehabilitation Act and Americans with Disabilities Act (ADA). Rehabilitation Act of 1973, § 504(b)(1)(A), as amended, 29 U.S.C. § 794(b)(1)(A); Americans with Disabilities Act of 1990, §§ 201(1), 202, 42 U.S.C. §§ 12131(1), 12132; 42 U.S.C. § 1983. *Galloway v. Superior Court of Dist. of Columbia*, 816 F. Supp. 12, 1993 U.S. Dist. LEXIS 3314 (1993).

Decision to exclude all blind persons from jury service and to reject plaintiff, who was blind, from jury service were result of official policy of District of Columbia Superior Court and, thus, District was subject to § 1983 liability. 42 U.S.C. § 1983. *Galloway v. Superior Court of Dist. of Columbia*, 816 F. Supp. 12, 1993 U.S. Dist. LEXIS 3314 (1993).

Plan of District of Columbia for selection of grand and petit juries, which was totally random and contained objective criteria for exclusion, did not discriminate against potential jurors on an impermissible basis and was in substantial compliance with the Federal Jury Selection and Service Act. 18 U.S.C. §§ 1861-1863. *Obregon v. United States*, 423 A.2d 200, 1980 D.C. App. LEXIS 404 (1980), writ of certiorari denied by 452 U.S. 918, 101 S. Ct. 3054, 69 L. Ed. 2d 422, 1981 U.S. LEXIS 2426, 49 U.S.L.W. 3911 (1981).

In general.

The Superior Court of the District of Columbia in a grand jury proceeding has the same subpoena power as a federal district court. *Perez v. United States*, 968 A.2d 39, 2009 D.C. App. LEXIS 57 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 474, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7527, 78 U.S.L.W. 3237 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 473, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7505, 78 U.S.L.W. 3237 (2009).

Under the District of Columbia Jury System Act (DCJSA), doubtful cases are to be resolved in the defendant's favor, with respect to access to discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment. *Gause v. United States*, 959 A.2d 671, 2008 D.C. App. LEXIS 432 (2008), vacated by 968 A.2d 1032, 2009 D.C. App. LEXIS 58 (D.C. 2009), reaffirmed in part, rejected in part by 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (D.C. 2010).

A statistical showing alone, without some analysis of the particular system involved, is not sufficient to prove systematic exclusion of a particular group from jury participation. U.S. Const. Amends. 5, 14. *Obregon v. United States*,

423 A.2d 200, 1980 D.C. App. LEXIS 404 (1980), writ of certiorari denied by 452 U.S. 918, 101 S. Ct. 3054, 69 L. Ed. 2d 422, 1981 U.S. LEXIS 2426, 49 U.S.L.W. 3911 (1981).

In prosecution for murder, kidnapping, and assault arising out of the so-called "Hanafi" take-overs of three buildings, defendants failed to proffer any statistics or other evidence, despite the trial court's invitation to do so, supporting their contention that the jury selection system was unconstitutional because it systematically excluded Hanafi Muslims. *Khaalis v. United States*, 408 A.2d 313, 1979 D.C. App. LEXIS 461 (1979), writ of certiorari denied by 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781, 1980 U.S. LEXIS 912 (1980).

Judicial notice.

District of Columbia Court of Appeals would take judicial notice that, in prior 12-month period, the criminal caseload in the District of Columbia Superior Court was substantially greater than that of a United States District Court, when the Court of Appeals was determining whether the standard, under the District of Columbia Jury System Act (DCJSA), for a defendant to obtain discovery of non-public jury information before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, differs from the standard under the Federal Jury Selection and Service Act (FJSSA). *Gause v. United States*, 959 A.2d 671, 2008 D.C. App. LEXIS 432 (2008), vacated by 968 A.2d 1032, 2009 D.C. App. LEXIS 58 (D.C. 2009), reaffirmed in part, rejected in part by 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (D.C. 2010).

Peremptory strikes.

Claims that age and sex-based peremptory strikes violate District of Columbia Jury System Act and federal Jury Selection and Service Act were waived where defendant did not argue them. D.C. Code 1981, § 11-1901 et seq.; 18 U.S.C. §§ 1861, 1862. *Baxter v. United States*, 640 A.2d 714, 1994 D.C. App. LEXIS 57 (1994).

Age-based peremptory strikes are constitutionally permissible. *Baxter v. United States*, 640 A.2d 714, 1994 D.C. App. LEXIS 57 (1994).

Presumptions and burden of proof.

Under the District of Columbia Jury System Act (DCJSA), to obtain discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, a defendant must make a particularized showing supporting a reasonable belief that underrepresentation in the jury pool or the venire exists as the result of practices of systematic exclusion. *Gause v. United States*, 959 A.2d 671, 2008 D.C. App. LEXIS 432 (2008), vacated

by 968 A.2d 1032, 2009 D.C. App. LEXIS 58 (D.C. 2009), reaffirmed in part, rejected in part

by 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (D.C. 2010).

§ 11-1904. Jury system plan.

(a) The Board of Judges shall adopt, implement, and as necessary modify, a written jury system plan for the random selection and service of grand and petit jurors in the Superior Court consistent with the provisions of this chapter. The adopted plan and any modifications shall be subject to a 30-day period of review by Congress in the manner provided for an act of the Council under section 602(c)(1) of the District of Columbia Home Rule Act. The plan shall include —

(1) detailed procedures to be followed by the clerk of the Court in the random selection of names from the master juror list;

(2) provisions for a master jury wheel (or other device of like purpose and function) which shall be emptied and refilled at specified intervals, not to exceed 24 months;

(3) provisions for the disclosure to the parties and the public of the names of individuals selected for jury service, except in cases in which the chief judge determines that confidentiality is required in the interest of justice; and

(4) procedures to be followed by the clerk of the Court in assigning individuals to grand and petit juries.

(b) The jury system plan shall be administered by the clerk of the Court under the supervision of the Board of Judges.

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Prior Codifications. — 1981 Ed., § 11-1904.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

References in text. — Section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, referred to in subsection (a), is codified as § 1-206.02.

CASE NOTES

ANALYSIS

In general.
Validity of plans.

In general.

Even if defendant claiming fair cross-section violation in jury selection succeeds in showing that alleged excluded group is distinctive group in community, that representation of group in venire is not fair and reasonable in relation to number of such persons in community, and that underrepresentation is due to systematic exclusion of group in jury selection process, state can justify its procedures of jury selection by demonstrating that they clearly advance significant state interest. U.S.C. Const.Amend. 5, 6. *Carle v. United States*, 705 A.2d 682, 1998 D.C. App. LEXIS 11 (1998), writ of certiorari denied by 523 U.S. 1066, 118 S. Ct. 1400, 140 L. Ed. 2d 658, 1998 U.S. LEXIS 2417, 66 U.S.L.W. 3655 (1998).

The District of Columbia Court of Appeals, vested with authority to hear appeals from convictions in criminal proceedings of the superior court and to reverse such convictions where the proceedings were so infected with error as to require reversal, is authorized to consider whether infirmities in the jury-selection process vitiate a conviction and, on so holding, reverse that conviction. U.S. Const.Art. 1, § 1 et seq.; D.C. Code 1973, § 11-1902; D.C. Code 1981, §§ 11-721, 17-306. *Sweet v. United States*, 449 A.2d 315, 1982 D.C. App. LEXIS 407 (1982).

Finding that members of the occupational groups who were subject to automatic exclusion from jury service upon request under the Jury Selection and Service Act of 1968 would have difficulty finding adequate temporary substitutes or would incur extra work or financial losses even if substitutes were obtained and that jury service by attorneys, teachers, clergy-

men, physicians, dentists, and nurses would entail undue hardship was not clearly erroneous. 18 U.S.C. §§ 1861, 1862, 1863(b)(5). *Sweet v. United States*, 449 A.2d 315, 1982 D.C. App. LEXIS 407 (1982).

Validity of plans.

Jury plan's exclusion of ex-felons for period of ten years from jury service promoted legitimate state goal of assuring impartiality of verdict, and thus did not violate fair cross-section requirement in jury selection. U.S. Const. Amends. 5, 6. *Carle v. United States*, 705 A.2d 682, 1998 D.C. App. LEXIS 11 (1998), writ of certiorari denied by 523 U.S. 1066, 118 S. Ct. 1400, 140 L. Ed. 2d 658, 1998 U.S. LEXIS 2417, 66 U.S.L.W. 3655 (1998).

Modified plan under which grand and petit jurors were selected to serve in superior court was not violative of requirements and intent of the Jury Selection and Service Act of 1968 in that the trial court determined that jury service

by members of groups subjected to automatic exclusion from jury upon request, attorneys, teachers, clergymen, physicians, dentists, and nurses, would entail undue hardship or extreme inconvenience. 18 U.S.C. §§ 1861, 1862, 1863(b)(5). *Sweet v. United States*, 449 A.2d 315, 1982 D.C. App. LEXIS 407 (1982).

Modified plan under which grand and petit jurors were selected to serve in the superior court did not deny defendant his Fifth Amendment and Sixth Amendment rights to be indicted and tried by jurors chosen from a fair cross section of the community because attorneys, teachers, clergymen, physicians, dentists, and nurses could be excused upon request where there was no evidence that members of those occupational groups possessed a unique perspective on human events or a viewpoint or outlook not shared by other segments of society. U.S. Const. Amends. 5, 6. *Sweet v. United States*, 449 A.2d 315, 1982 D.C. App. LEXIS 407 (1982).

§ 11-1905. Master juror list.

(a) The jury system plan shall provide for the compilation and maintenance by the Board of Judges of a master juror list from which names of prospective jurors shall be drawn. Such master juror list shall consist of the list of District of Columbia voters, and names from such other appropriate sources and lists as may be provided in the jury system plan.

(b) Notwithstanding any other provision of law, upon request of the Board of Judges any person having custody, possession, or control of any list required under subsection (a) shall provide such list to the Court, at cost, at all reasonable times. Each list shall contain the names and addresses of individuals on the list. Any list obtained by the Court under the provisions of this chapter may be used by the Court only for the selection of jurors pursuant to this chapter.

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Prior Codifications. — 1981 Ed., § 11-1905.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

§ 11-1906. Qualification of jurors.

(a) The jury system plan shall provide for procedures for the random selection and qualification of grand and petit jurors from the master juror list. Such plan may provide for separate or joint qualification and summoning processes.

(b)(1) An individual shall be qualified to serve as a juror if that individual —

(A) is a resident of the District of Columbia;

(B) is a citizen of the United States;

(C) has attained the age of 18 years; and

(D) is able to read, speak, and understand the English language.

(2) An individual shall not be qualified to serve as a juror —

(A) if determined to be incapable by reason of physical or mental infirmity of rendering satisfactory jury service; or

(B) if that individual has been convicted of a felony or has a pending felony or misdemeanor charge, except that an individual disqualified for jury service by reason of a felony conviction may qualify for jury service not less than one year after the completion of the term of incarceration, probation, or parole following appropriate certification under procedures set out in the jury system plan.

(3) Any determination regarding qualification for jury service shall be made on the basis of information provided in the juror qualification form and any other competent evidence.

(4) An individual who is blind may not be disqualified from serving as a juror solely on the basis of blindness, but may be disqualified from serving as a juror in a particular case if the individual's blindness makes the individual incapable of rendering satisfactory jury service in that case.

(c)(1) The jury system plan shall provide that a juror qualification form be mailed to each prospective juror. The form and content of such juror qualification form shall be determined under the plan. Notarization of the juror qualification form shall not be required.

(2) An individual who fails to return a completed juror qualification form as instructed may be ordered by the Court to appear before the clerk to fill out such form, to appear before the Court and show cause why he or she should not be held in contempt for failure to submit the qualification form, or both. An individual who fails to show good cause for such failure, or who without good cause fails to appear pursuant to a Court order, may be punished by a fine of not more than \$300, by imprisonment for not more than seven days, or both.

(d) An individual who intentionally misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be punished by a fine of not more than \$300, by imprisonment for not more than 90 days, or both.

(July 29, 1970, 84 Stat. 515, Pub. L. 91-358, title I, § 111, Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2; June 28, 1994, 108 Stat. 731, Pub. L. 103-269.)

Section references. — This section is referred to in §§ 11-1907 and 11-1908.

Prior Codifications. — 1981 Ed., § 11-1906.

1973 Ed., § 11-1901.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

CASE NOTES

ANALYSIS

Felons and ex-felons.

Mental competence of juror.

Felons and ex-felons.

The trial court, during voir dire, is under no obligation to inquire as to the jurors' experience with crimes of any type. *Mills v. United States*, 796 A.2d 26, 2002 D.C. App. LEXIS 78 (2002).

In escape prosecution, trial judge did not abuse its discretion in rejecting defense coun-

sel's request that, during individual interviews with each prospective juror during voir dire, judge ask question to jury concerning whether they or persons close to them have been accused of, victim of, or a witness to any crime without permitting juror to make determination on whether such experience affected juror's ability to be fair and impartial; while it might have been appropriate to inquire to the prospective jurors' experience with the underlying offense, no such question was requested, and defense

counsel was given full opportunity to ask any follow-up questions that counsel wished to explore. *Mills v. United States*, 796 A.2d 26, 2002 D.C. App. LEXIS 78 (2002).

Statutory one-year exclusion from jury qualification placed on ex-felons was minimum amount of time before ex-felon could serve as juror, which could be extended to ten years in superior court's jury plan. D.C. Code 1981, § 11-1906. *Carle v. United States*, 705 A.2d 682, 1998 D.C. App. LEXIS 11 (1998), writ of certiorari denied by 523 U.S. 1066, 118 S. Ct. 1400, 140 L. Ed. 2d 658, 1998 U.S. LEXIS 2417, 66 U.S.L.W. 3655 (1998).

Juror's failure to disclose that he was convicted felon on life parole made him legally ineligible to sit on jury. D.C. Code 1981, § 11-1906(b)(2)(B). *Young v. United States*, 694 A.2d 891, 1997 D.C. App. LEXIS 123 (1997).

Mental competence of juror.

Although the distinction between "extraneous" and "intra-jury" influences is generally appropriate for determining whether to permit a juror's testimony to impeach the verdict, that distinction is not necessarily meaningful when the threshold question of a juror's very competence is at issue; thus, there is a further, tightly circumscribed exception permitting inquiry into a juror's mental competence. *Khaalis v.*

United States, 408 A.2d 313, 1979 D.C. App. LEXIS 461 (1979), writ of certiorari denied by 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781, 1980 U.S. LEXIS 912 (1980).

In respect to permitting a juror's testimony to impeach the verdict, the courts generally have found "clear" and "strong" evidence of a juror's incompetence limited to an "adjudication" of mental illness or incompetency "closely" in advance of or after the trial; in fact, evidence of such an adjudication is usually necessary even to justify the court's conducting a hearing into the alleged incompetence. *Khaalis v. United States*, 408 A.2d 313, 1979 D.C. App. LEXIS 461 (1979), writ of certiorari denied by 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781, 1980 U.S. LEXIS 912 (1980).

Defendants, who sought a new trial based on posttrial evidence that one juror may have been suffering from a mental infirmity during the jury's deliberations, failed to meet the criteria justifying a hearing on the juror's competence, where their proffers were unverified, conclusional, and did not evidence a mental infirmity "closely contemporaneous" to the trial. *Khaalis v. United States*, 408 A.2d 313, 1979 D.C. App. LEXIS 461 (1979), writ of certiorari denied by 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 781, 1980 U.S. LEXIS 912 (1980).

§ 11-1907. Summoning of prospective jurors.

(a) At such times as are determined under the jury system plan, the Court shall summon or cause to be summoned from among qualified individuals under section 11-1906 sufficient prospective jurors to fulfill requirements for petit and grand jurors for the Court. A summons shall require a prospective juror to report for possible jury service at a specified time and place unless advised otherwise by the Court. Service of prospective jurors may be made personally or by first-class, registered, or certified mail as determined under the plan.

(b) A prospective juror who fails to appear for jury duty may be ordered by the Court to appear and show cause why he or she should not be held in contempt for such failure to appear. A prospective juror who fails to show good cause for such failure, or who without good cause fails to appear pursuant to a Court order, may be punished by a fine of not more than \$300, by imprisonment for not more than seven days, or both.

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Prior Codifications. — 1981 Ed., § 11-1907.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

§ 11-1908. Exclusion from jury service.

(a) Subject to the provisions of this section and of sections 11-1903, 11-1906,

and 11-1909, no individual or class of individuals may be disqualified, excluded, excused, or exempt from service as a juror.

(b) An individual summoned for jury service may be: (1) excluded by the Court on the ground that that individual may be unable to render impartial jury service or that his or her service as a juror would be likely to disrupt the proceedings; (2) excluded upon peremptory challenge as provided by law; (3) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown; or (4) excluded upon determination by the Court that his or her service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. No person shall be excluded under clause (4) of this subsection unless the judge, in open Court, determines that such exclusion is warranted and that exclusion of that individual will not be inconsistent with sections 11-1901 and 11-1903 of this chapter.

(c) An individual excluded from a jury shall be eligible to sit on another jury if the basis for the initial exclusion would not be relevant to his or her ability to serve on such other jury. The procedures for challenges to and review of exclusions from jury service shall be set forth in the jury system plan.

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Prior Codifications. — 1981 Ed., § 11-1908.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

CASE NOTES

ANALYSIS

Immunity.
In general.

Immunity.

Assistant United States Attorney (AUSA) and juror officer were entitled to qualified immunity for their conduct in removing grand juror from a grand jury serving in District of Columbia, based on complaints from other grand jurors, in pro se civil rights action brought by removed grand juror; no case law demonstrated that the removal of the grand juror would violate his constitutional rights, and District of Columbia statute authorized removal of jurors on basis that jurors' service would be likely to disrupt the proceedings, so that the alleged violation of juror's rights was not clearly established. *Atherton v. D.C. Office of the Mayor*, 813 F.Supp.2d 78, 2011 U.S. Dist. LEXIS 109068 (2011), affirmed by 706 F.3d 512, 2013 U.S. App. LEXIS 2689 (D.C. Cir. 2013).

In general.

Trial court acted within its discretion, in store patron's action against police officer for assault and battery and false arrest and against store for negligent hiring, training, and supervision after he was stopped on suspicion of shoplifting but released without charge, in

excusing for cause juror who admitted that she would probably identify or sympathize with patron if he was suffering from depression as he claimed, juror who reported past issue with anger management and whose demeanor at bench struck defense counsel and judge as disturbing, and juror who preferred not to endure jury deliberations that might upset her medical condition, for which she was taking psychotropic drugs. *Steele v. D.C. Tiger Mkt.*, 854 A.2d 175, 2004 D.C. App. LEXIS 384 (2004).

A trial judge has broad discretion in deciding whether to excuse a juror for cause to achieve goal of selecting jurors who would be able to fulfill their responsibilities. *Steele v. D.C. Tiger Mkt.*, 854 A.2d 175, 2004 D.C. App. LEXIS 384 (2004).

Store patron was not substantially prejudiced, in his action against police officer for assault and battery and false arrest and against store for negligent hiring, training, and supervision after he was stopped on suspicion of shoplifting but released without charge, by trial court's removal for cause of juror who admitted that she would probably identify or sympathize with patron if he was suffering from depression as he claimed, juror who reported past issue with anger management and whose demeanor at bench struck defense coun-

sel and judge as disturbing, and juror who preferred not to endure jury deliberations that might upset her medical condition, for which

she was taking psychotropic drugs. *Steele v. D.C. Tiger Mkt.*, 854 A.2d 175, 2004 D.C. App. LEXIS 384 (2004).

§ 11-1909. Deferral from jury service.

A qualified prospective juror may be deferred from jury service only upon a showing of undue hardship, extreme inconvenience, public necessity, or temporary physical or mental disability which would affect service as a juror. The procedure for requesting a deferral from jury service and the procedure and basis for granting a deferral shall be set forth in the master jury plan.

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Section references. — This section is referred to in § 11-1908.

Prior Codifications. — 1981 Ed., § 11-1909.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

§ 11-1910. Challenging compliance with selection procedures.

(a) A party may challenge the composition of a jury by a motion for appropriate relief. A challenge shall be brought and decided before any individual juror is examined, unless the Court orders otherwise. The motion shall be in writing, supported by affidavit, and shall specify the facts constituting the grounds for the challenge. If the Court so determines, the motion may be decided on the basis of the affidavits filed with the challenge. If the Court orders trial of the challenge, witnesses may be examined on oath by the Court and may be so examined by either party.

(b) If the Court determines that in selecting a grand or petit jury there has been a substantial failure to comply with this chapter, the Court shall stay the proceedings pending the selection of a jury in conformity with this chapter, quash the indictment, or grant other appropriate relief.

(c) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the District of Columbia, the United States, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this chapter. Nothing in this section shall preclude any person from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, economic status, marital status, age, or physical handicap in the selection of individuals for service on grand or petit juries.

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Section references. — This section is referred to in § 11-1914.

Prior Codifications. — 1981 Ed., § 11-1910.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

CASE NOTES

ANALYSIS

In general.
Judicial notice.
Presumptions and burden of proof.

In general.

Under the District of Columbia Jury System Act (DCJSA), doubtful cases are to be resolved in the defendant's favor, with respect to access to discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment. *Gause v. United States*, 959 A.2d 671, 2008 D.C. App. LEXIS 432 (2008), vacated by 968 A.2d 1032, 2009 D.C. App. LEXIS 58 (D.C. 2009), reaffirmed in part, rejected in part by 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (D.C. 2010).

Even assuming that statute governing challenges to composition of jury provides means for Batson-based challenge to peremptory strike, and litigants must rely on statute to remedy Batson violation, immediate reinstatement of stricken juror is not precluded. D.C. Code 1981, § 11-1910(b). *Epps v. United States*, 683 A.2d 749, 1996 D.C. App. LEXIS 186 (1996).

Statute governing challenge to composition of jury is designed mainly to deal with deficiencies in machinery that selects jurors from general population; it does not provide means for Batson-based challenge to peremptory strike. D.C. Code 1981, § 11-1910(a). *Epps v. United States*, 683 A.2d 749, 1996 D.C. App. LEXIS 186 (1996).

Judicial notice.

District of Columbia Court of Appeals would

take judicial notice that, in prior 12-month period, the criminal caseload in the District of Columbia Superior Court was substantially greater than that of a United States District Court, when the Court of Appeals was determining whether the standard, under the District of Columbia Jury System Act (DCJSA), for a defendant to obtain discovery of non-public jury information before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, differs from the standard under the Federal Jury Selection and Service Act (FJSSA). *Gause v. United States*, 959 A.2d 671, 2008 D.C. App. LEXIS 432 (2008), vacated by 968 A.2d 1032, 2009 D.C. App. LEXIS 58 (D.C. 2009), reaffirmed in part, rejected in part by 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (D.C. 2010).

Presumptions and burden of proof.

Under the District of Columbia Jury System Act (DCJSA), to obtain discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, a defendant must make a particularized showing supporting a reasonable belief that underrepresentation in the jury pool or the venire exists as the result of practices of systematic exclusion. *Gause v. United States*, 959 A.2d 671, 2008 D.C. App. LEXIS 432 (2008), vacated by 968 A.2d 1032, 2009 D.C. App. LEXIS 58 (D.C. 2009), reaffirmed in part, rejected in part by 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (D.C. 2010).

§ 11-1911. Length of service.

The length of service for grand and petit jurors shall be determined by the master jury plan. In any twenty-four month period an individual shall not be required to serve more than once as a grand or petit juror except as may be necessary by reason of the insufficiency of the master juror list or as ordered by the Court.

(July 29, 1970, 84 Stat. 515, Pub. L. 91-358, title I, § 111; Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Prior Codifications. — 1981 Ed., § 11-1911.

1973 Ed., § 11-1905.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

§ 11-1912. Juror fees.

(a) Notwithstanding section 602(a) of the District of Columbia Home Rule

Act, grand and petit jurors serving in the Superior Court shall receive fees and expenses at rates established by the Board of Judges of the Superior Court, except that such fees and expenses may not exceed the respective rates paid to such jurors in the Federal system.

(b) A petit or grand juror receiving benefits under the laws of employment security of the District of Columbia shall not lose such benefits on account of performance of juror service.

(c) Employees of the United States or of any State or local government who serve as grand or petit jurors and who continue to receive regular compensation during the period of jury service shall not be compensated for jury service. Amounts representing reimbursement of expenses incurred in connection with jury service may be paid to such employees to the extent provided in the jury system plan.

(July 29, 1970, 84 Stat. 516, Pub. L. 91-358, title I, § 111; Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2; Aug. 5, 1997, 111 Stat. 755, Pub. L. 105-33, § 11246(a).)

Prior Codifications. — 1981 Ed., § 11-1912.

1973 Ed., § 11-1906.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

References in text. — Section 602(a) of the District of Columbia Home Rule Act, referred to in this section, is § 602(a) of the Act of December 24, 1973, 87 Stat. 813, Pub. L. 93-198, which is codified as § 1-206.02(a).

Section 11717(b) of title XI of Pub. L. 105-33, 111 Stat. 786, provided that any reference in law or regulation to the "District of Columbia Self-Government and Governmental Reorganization Act" shall be deemed to be a reference to the "District of Columbia Home Rule Act," which is set out in Volume 1.

§ 11-1913. Protection of employment of jurors.

(a) An employer shall not deprive an employee of employment, threaten, or otherwise coerce an employee with respect to employment because the employee receives a summons, responds to a summons, serves as a juror, or attends Court for prospective jury service.

(b) An employer who violates subsection (a) is guilty of criminal contempt. Upon a finding of criminal contempt an employer may be fined not more than \$300, imprisoned for not more than 30 days, or both, for a first offense, and may be fined not more than \$5,000, imprisoned for not more than 180 days, or both, for any subsequent offense.

(c) If an employer discharges an employee in violation of subsection (a), the employee within 9 months of such discharge may bring a civil action for recovery of wages lost as a result of the violation, for an order of reinstatement of employment, and for damages. If an employee prevails in an action under this subsection, that employee shall be entitled to reasonable attorney fees fixed by the court.

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Prior Codifications. — 1981 Ed., § 11-1913.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

§ 11-1914. Preservation of records.

(a) All records and lists compiled and maintained in connection with the selection and service of jurors shall be preserved for the length of time specified in the jury system plan.

(b) The contents of any records or lists used in connection with the selection process shall not be disclosed, except in connection with the preparation or presentation of a motion under § 11-1910, or until all individuals selected to serve as grand or petit jurors from such lists have been discharged.

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Prior Codifications. — 1981 Ed., § 11-1914.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

CASE NOTES

ANALYSIS

Discovery.

Judicial notice.

Presumptions and burden of proof.

Discovery.

Court of Appeals would not construe omission of sentence in District of Columbia Jury System Act (DCJSA) that was present in federal Jury Selection and Service Act (FJSSA), which was predecessor to DCJSA, stating that parties in a case “shall be allowed to inspect, reproduce, and copy such records or papers [relevant to a motion] at all reasonable times during the preparation and pendency of such a motion,” so as to require satisfaction of threshold showing that movant for discovery under DCJSA had objective grounds from other sources to believe, or at least suspect, that court records would yield affirmative evidence of substantial failure to comply with DCJSA; Court would not presume Congress intended to remove rights by implication, and such qualification of right did not exist in FJSSA. *Gause v. United States*, 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (2010).

A litigant preparing a possible motion challenging the jury selection process under the District of Columbia Jury System Act (DCJSA) may inspect certain materials that are used in connection with the jury selection process without a threshold showing that there is reason to believe such discovery will ultimately substantiate a statutory or constitutional violation; the only qualification is that the litigant's request must be in connection with the preparation or presentation of such a motion. *Gause v. United States*, 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (2010).

Judicial notice.

District of Columbia Court of Appeals would

take judicial notice that, in prior 12-month period, the criminal caseload in the District of Columbia Superior Court was substantially greater than that of a United States District Court, when the Court of Appeals was determining whether the standard, under the District of Columbia Jury System Act (DCJSA), for a defendant to obtain discovery of non-public jury information before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, differs from the standard under the Federal Jury Selection and Service Act (FJSSA). *Gause v. United States*, 959 A.2d 671, 2008 D.C. App. LEXIS 432 (2008), vacated by 968 A.2d 1032, 2009 D.C. App. LEXIS 58 (D.C. 2009), reaffirmed in part, rejected in part by 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (D.C. 2010).

Presumptions and burden of proof.

Under the District of Columbia Jury System Act (DCJSA), to obtain discovery of non-public jury information, before filing a claim of underrepresentation of a distinctive group in the jury pool or venire, as would violate the Due Process Clause or the Sixth Amendment, a defendant must make a particularized showing supporting a reasonable belief that underrepresentation in the jury pool or the venire exists as the result of practices of systematic exclusion. *Gause v. United States*, 959 A.2d 671, 2008 D.C. App. LEXIS 432 (2008), vacated by 968 A.2d 1032, 2009 D.C. App. LEXIS 58 (D.C. 2009), reaffirmed in part, rejected in part by 6 A.3d 1247, 2010 D.C. App. LEXIS 613 (D.C. 2010).

§ 11-1915. Fraud in the selection process.

An individual who commits fraud in the processing or selection of jurors or prospective jurors, either by causing any name to be inserted into any list maliciously or by causing any name to be deleted from any list maliciously (including malicious data entry or the altering of any data processing machine or any set of instructions or programs which control data processing equipment for such malicious purpose), is guilty of the crime of jury tampering, and, upon conviction, may be punished by a fine of not more than \$10,000, imprisonment for not more than two years, or both. This section shall not limit any other provisions of law concerning the crime of jury tampering.

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Prior Codifications. — 1981 Ed., § 11-1915.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

§ 11-1916. Grand jury; additional grand jury.

(a) A grand jury serving in the District of Columbia may take cognizance of all matters brought before it regardless of whether an indictment is returnable in the Federal or District of Columbia courts.

(b) If the United States Attorney for the District of Columbia certifies in writing to the chief judge that an additional grand jury is required, the judge may in his or her discretion order an additional grand jury summoned which shall be drawn at such time as he or she designates. Unless discharged by order of the judge, the additional grand jury shall serve until the end of the term for which it is drawn.

(July 29, 1970, 84 Stat. 515, Pub. L. 91-358, title I, § 111; Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Prior Codifications. — 1981 Ed., § 11-1916.
1973 Ed., § 11-1903.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

CASE NOTES

ANALYSIS

In general.

Purpose.

Validity.

Validity of indictments returned.

In general.

District of Columbia superior court grand jury is authorized by Congress to return a federal indictment. *United States v. Allen*, 729 F. Supp. 120, 1989 U.S. Dist. LEXIS 16118 (1989).

A defendant cannot be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him. *Zacarias v. United States*, 884 A.2d 83, 2005 D.C. App. LEXIS 502 (2005).

A grand jury may compel the production of evidence or the testimony of witnesses as it considers appropriate, and its operation generally is unrestrained by the technical procedural and evidentiary rules governing the conduct of criminal trials. *Williams v. United States*, 757 A.2d 100, 2000 D.C. App. LEXIS 191 (2000).

Statute, which provides that grand jury may take cognizance of all matters brought before it regardless of whether an indictment is returnable in federal or District of Columbia courts, does not have the effect of permitting a grand jury only to "take cognizance" of a matter ultimately proper before another court, but not to return an indictment with respect to such matters. D.C. Code § 11-1903; D.C. Code SCR, Criminal Rule 6 comment. *Hackney v. United*

States, 389 A.2d 1336, 1978 D.C. App. LEXIS 479 (1978), writ of certiorari denied by 439 U.S. 1132, 99 S. Ct. 1054, 59 L. Ed. 2d 95, 1979 U.S. LEXIS 645 (1979).

Purpose.

Superior court grand juries were intended to have powers comparable to federal grand juries. D.C. Code §§ 11-942(b), 11-1903. *Christian v. United States*, 394 A.2d 1, 1978 D.C. App. LEXIS 346 (1978), writ of certiorari denied by 442 U.S. 944, 99 S. Ct. 2889, 61 L. Ed. 2d 315, 1979 U.S. LEXIS 2203 (1979).

Validity.

District of Columbia statute authorizing grand jury convened by District of Columbia Article I judge to return indictment in federal district court did not unconstitutionally abrogate Article III structural protections and thereby infringe on Article III power of federal judicial branch. U.S. Const. Art. 1, § 8, cl. 17; Art. 3, § 1 et seq.; Amend. 5; D.C. Code 1981, § 11-1916(a). *United States v. Seals*, 130 F.3d 451, 1997 U.S. App. LEXIS 34307 (C.A.D.C. 1997), writ of certiorari denied by 524 U.S. 928, 118 S. Ct. 2323, 141 L. Ed. 2d 697, 1998 U.S. LEXIS 3923, 66 U.S.L.W. 3789 (1998), writ of certiorari denied by 525 U.S. 844, 119 S. Ct. 111, 142 L. Ed. 2d 89, 1998 U.S. LEXIS 5231, 67 U.S.L.W. 3232 (1998).

There was no constitutional impediment to congressional decision to permit grand juries attached to either district court or superior court to return indictments both for violations of a federal or local criminal statute. D.C. Code § 11-1903(a); U.S. Const. art. 1, § 1 et seq.; art. 3, § 1 et seq. *Hackney v. United States*, 389 A.2d 1336, 1978 D.C. App. LEXIS 479 (1978), writ of certiorari denied by 439 U.S. 1132, 99 S.

Ct. 1054, 59 L. Ed. 2d 95, 1979 U.S. LEXIS 645 (1979).

Validity of indictments returned.

Dismissal of an indictment on the ground of allegedly perjured grand jury testimony, as an exercise of the court's supervisory authority, is a narrow exception to the rule that an indictment returned by a legally constituted and unbiased grand jury that is valid on its face is enough to call for a trial on the merits. *Jones v. United States*, 893 A.2d 564, 2006 D.C. App. LEXIS 92 (2006).

Where false material testimony was presented to the grand jury, dismissal of an indictment is warranted only where it is established that the false testimony substantially influenced the grand jury's decision to indict, or where there exists a grave doubt whether that decision was free from the substantial influence of the false testimony. *Jones v. United States*, 893 A.2d 564, 2006 D.C. App. LEXIS 92 (2006).

As a general matter, a trial court may not dismiss an indictment for errors in grand jury proceedings unless such errors prejudiced the defendants. *Williams v. United States*, 757 A.2d 100, 2000 D.C. App. LEXIS 191 (2000).

Return of indictment by grand jury of United States district court to the superior court of the District of Columbia did not violate indietee's Fifth Amendment rights where beginning on date indictment was returned the United States district court for the District of Columbia no longer had jurisdiction over offense with which indietee was charged, to wit, carrying a pistol without a license; on date of indictment the district court grand jury was expressly authorized by statute to return indictments to the superior court. D.C. Code §§ 11-502, 11-923, 11-1903, 22-3204; U.S. Const. Amend. 5. *Atkinson v. United States*, 295 A.2d 899, 1972 D.C. App. LEXIS 269 (1972).

§ 11-1917. Coordination and cooperation of courts.

To the extent feasible, the Superior Court and the United States District Court shall consider the respective needs of each court in the qualification, selection, and service of jurors. Nothing in this chapter shall be construed to prevent such courts from entering into any agreement for sharing resources and facilities (including automated data processing and hardware and software, forms, postage, and other resources).

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Prior Codifications. — 1981 Ed., § 11-1917.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

§ 11-1918. Effect of invalidity.

If any provision of this Act [chapter] or the application of that provision is held invalid, such invalidity shall not affect any other provision or application

of this Act [chapter] which can be given effect without the invalid provision or application.

(Nov. 14, 1986, 100 Stat. 3635, Pub. L. 99-650, § 2.)

Prior Codifications. — 1981 Ed., § 11-1918.

Editor's notes. — The bracketed word "chapter" was inserted by the editor.

Short title. — Short title: See Historical and Statutory Notes following § 11-1901.

CHAPTER 21. REGISTER OF WILLS.

Sec.

11-2101. Continuation of office.

11-2102. Appointment; oath; qualifications;
compensation.

11-2103. Services as clerk.

Sec.

11-2104. Powers and duties; restrictions.

11-2105. Deputies and other employees.

11-2106. Accounts.

§ 11-2101. Continuation of office.

The Office of the Register of Wills shall continue as an office in the Probate Division of the Superior Court.

(July 29, 1970, 84 Stat. 516, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-2101. 1973 Ed., § 11-2101.

§ 11-2102. Appointment; oath; qualifications; compensation.

(a) The Superior Court shall appoint and remove the Register of Wills. The Register of Wills shall —

(1) take an oath for the faithful and impartial discharge of the duties of the office; and

(2) seasonably record (A) the decrees and orders of the court in any matters over which the court exercises probate jurisdiction or powers, (B) all wills proved before the Register of Wills or the court, and (C) all other matters directed to be recorded in the court or in the office.

(b) A person may not be appointed the Register of Wills for the District of Columbia unless that person —

(1) is a citizen of the United States;

(2) has been a member of the bar of the District of Columbia for a period of at least five of the ten years immediately before appointment; and

(3) has been actively engaged in the practice of probate law in the District of Columbia or otherwise has broad experience in, or knowledge on the subject of, the administration of the estates of deceased persons in the District of Columbia.

(c) The compensation of the Register of Wills shall be fixed by the Superior Court without regard to chapter 51 and subchapter III of chapter 53 of title 5 [§ 5101 et seq., § 5331 et seq.] of the United States Code but at a rate not to exceed the maximum rate prescribed for GS-16 of the General Schedule.

(July 29, 1970, 84 Stat. 516, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(96), (97), 108 Stat. 713; Oct. 18, 2004, 118 Stat. 1345, Pub. L. 108-335, § 329; Oct. 16, 2006, 120 Stat. 2027, Pub. L. 109-356, § 116(a).)

Prior Codifications. — 1981 Ed., § 11-2102. 1973 Ed., § 11-2102.

Effect of amendments. — Pub. L. 108-335 repealed subsec. (a)(2) which had read as fol-

lows: “(2) give bond, with two or more sureties, to be approved by the chief judge of the Superior Court, in the amount designated by the court, faithfully to discharge the duties of the office, and seasonably to record (A) the decrees

and orders of the court in any matters over which the court exercises probate jurisdiction or powers, (B) all wills proved before the Register of Wills or the court, and (C) all other matters directed to be recorded in the court or in the office.”

Pub. L. 109-356 made a technical correction to Pub. L. 108-335 that deleted “bond;” from the section heading, substituted “seasonably record” for “give bond, with two or more sureties, to be approved by the chief judge of the Superior Court, in the amount designated by the court, faithfully to discharge the duties of the office, and seasonably to record” in subsec.

(a)(2), and deleted the third sentence of subsec. (a) which read as follows: “The bond shall be entered in full upon the minutes of the Superior Court and the original filed with the records of the Superior Court.”

Effective date. — Section 116(c) of Pub. L. 109-356 provided that the amendments made by this section shall take effect as if included in the enactment of the District of Columbia Appropriations Act, 2005 [Pub. L. 108-335].

References in text. — The General Schedule, referred to at the end of subsection (c) of this section, appears in 5 U.S.C. § 5332.

§ 11-2103. Services as clerk.

With respect to the Probate Division of the Superior Court, the Register of Wills shall perform such duties as clerk as the chief judge of the Superior Court may assign.

(July 29, 1970, 84 Stat. 516, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-2103. 1973 Ed., § 11-2103.

§ 11-2104. Powers and duties; restrictions.

(a) The Register of Wills may —

(1) receive inventories and accounts of sales, examine vouchers, and state accounts of executors, administrators, collectors, and guardians, subject to final approval of the court;

(2) take the probate of claims against the estates of deceased persons that are properly brought before the Register of Wills, and approve or reject claims not exceeding \$300;

(3) take the probate of wills and accept the bonds of executors, administrators, collectors, and guardians, subject to approval of the court; and

(4) audit and state fiduciary accounts.

(b) In matters over which the Superior Court has probate jurisdiction or powers, the Register of Wills shall —

(1) make full and fair entries, in separate records, of the proceedings of the court;

(2) record in electronic or other format all wills proved before the Register of Wills or the court and other matters required by law to be recorded in the court;

(3) lodge in places of safety designated by the court original papers filed with the Register of Wills;

(4) make out and issue every summons, process, and order of the court;

(5) prepare and submit to the Executive Officer of the District of Columbia courts such reports as may be required; and

(6) in every respect, act under the control and direction of the court.

(c) The Register of Wills may not —

(1) practice law in any court of the District of Columbia or of the United States; or

(2) demand or receive any fee, gratuity, gift, or reward for giving advice in any matter relating to the office.

(July 29, 1970, 84 Stat. 516, Pub. L. 91-358, title I, § 111; Oct. 28, 1986, 100 Stat. 3228, Pub. L. 99-573, § 5(b); June 13, 1994, Pub. L. 103-266, §§ 1(b)(98)-(102), 108 Stat. 713; Oct. 16, 2006, 120 Stat. 2024, Pub. L. 109-356, § 111(a), (b)(1).)

Prior Codifications. — 1981 Ed., § 11-2104. in the section heading, deleted “penalties”; and rewrote subsec. (b) and repealed subsecs. (d) and (e).

1973 Ed., § 11-2104.

Effect of amendments. — Pub. L. 109-356,

§ 11-2105. Deputies and other employees.

The Executive [Executive] Officer of the District of Columbia courts shall appoint and remove such personnel as may be needed by the Register of Wills, pursuant to Chapter 17 of this title.

(July 29, 1970, 84 Stat. 517, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-2105.

1973 Ed., § 11-2105.

Editor’s notes. — Near the beginning of this section, “Executive” was inserted, in brackets, to correct a misspelling.

§ 11-2106. Accounts.

All fees, costs, and other moneys, except uncollected fees not required by law to be prepaid, collected by the Register of Wills with respect to matters within the jurisdiction of the Superior Court shall be turned over to the Fiscal Officer of the District of Columbia courts.

(July 29, 1970, 84 Stat. 517, Pub. L. 91-358, title I, § 111.)

Prior Codifications. — 1981 Ed., § 11-2106.

1973 Ed., § 11-2106.

CHAPTER 23. MEDICAL EXAMINER [REPEALED].

Sec.

11-2301 to 11-2312. [Repealed].

§ 11-2301. Medical Examiner; Deputies; appointment, qualifications, and compensation. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 518, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2301; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 148(a).)

Prior Codifications. — 1981 Ed., § 11-2301.

1973 Ed., § 11-2301.

Temporary Amendment of Section. — Section 2 of D.C. Law 13-104 which enacted the Mandatory Autopsy for Deceased Wards of the District of Columbia and Mandatory Unusual Incident Report Temporary Act of 1999, added definitions of unusual incident and ward.

Section 7 (b) of D.C. Law 13-104 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90-day) requirement of certain autopsies and reports, see §§ 2 to 5 of the Mandatory Autopsy for Deceased Wards of the District of Columbia and Mandatory Unusual Incident Report Emergency Act of 1999 (D.C. Act 13-232, January 11, 2000, 47 DCR 515).

For temporary (90-day) requirement of certain autopsies and reports, see §§ 2 to 5 of the Mandatory Autopsy for Deceased Wards of the District of Columbia and Mandatory Unusual Incident Report Congressional Review Emergency Act of 2000 (D.C. Act 13-309, April 7, 2000, 47 DCR 2730).

Transfer of Functions. — Functions vested

in the Department of Public Health were transferred to the Department of Human Resources by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

Mayor's Orders. — Establishment of Commission on Medical Examiner's Office: See Mayor's Order 89-62, March 28, 1989.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-2302. Supporting services and facilities. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 518, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2302; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 148(a).)

Prior Codifications. — 1981 Ed., § 11-2302.

1973 Ed., § 11-2302.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-2303. Former duties of coroner; oaths; teaching. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 518, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2303; June 13, 1994, Pub. L. 103-266, § 1(b)(103), 108 Stat. 713; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 148(a).)

Prior Codifications. — 1981 Ed., § 11-2303.

1973 Ed., § 11-2303.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-2304. Deaths to be investigated; notification and investigation of deaths. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 518, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2304; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 148(a).)

Section references. — This section is referred to in § 11-2305.

1973 Ed., § 11-2304.

Prior Codifications. — 1981 Ed., § 11-2304.

§ 11-2305. Possession of evidence and property. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 519, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2305; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 148(a).)

Prior Codifications. — 1981 Ed., § 11-2305.

1973 Ed., § 11-2305.

§ 11-2306. Further investigation; autopsy. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 519, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2306; June 13, 1994, Pub. L. 103-266, §§ 1(b)(104), (105), 108 Stat. 713; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 148(a).)

Prior Codifications. — 1981 Ed., § 11-2306.

1973 Ed., § 11-2306.

§ 11-2307. Autopsy by pathologist other than medical examiner. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 519, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2307; June 13, 1994, Pub. L. 103-266, §§ 1(b)(106), (107), 108 Stat. 713; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 148(a).)

Prior Codifications. — 1981 Ed., § 11-2307.

1973 Ed., § 11-2307.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code,

§ 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-2308. Delivery of body; expenses. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 519, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2308; June 13, 1994, Pub. L. 103-266, § 1(b)(108), 108 Stat. 713; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 148(a).)

Prior Codifications. — 1981 Ed., § 11-2308.

1973 Ed., § 11-2308.

§ 11-2309. Records; reports; fees for other services. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 520, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2309; June 13, 1994, Pub. L. 103-266, §§ 1(b)(109), (110), 108 Stat. 713; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 148(a).)

Section references. — This section is referred to in § 11-2310.

Prior Codifications. — 1981 Ed., § 11-2309.

1973 Ed., § 11-2309.

Change in Government. — This section originated at a time when local government powers were delegated to the District of Columbia Council and to a Commissioner of the District of Columbia. The District of Columbia Self-Government and Governmental Reorgani-

zation Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

§ 11-2310. Records as evidence. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 520, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2310; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 148(a).)

Prior Codifications. — 1981 Ed., § 11-2310. 1973 Ed., § 11-2310.

§ 11-2311. Autopsies performed under court order. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 520, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2311; June 13, 1994, Pub. L. 103-266, § 1(b)(111), 108 Stat. 713; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 148(a).)

Section references. — This section is referred to in § 43-128. 1973 Ed., § 11-2311.

Prior Codifications. — 1981 Ed., § 11-2311.

§ 11-2312. Tissue transplants. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 520, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-2312; Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 148(a).)

Prior Codifications. — 1981 Ed., § 11-2312. 1973 Ed., § 11-2312.

CHAPTER 25. ATTORNEYS.

Sec.

11-2501. Admission to bar; regulations; prior admission.

11-2502. Censure, suspension, or disbarment for cause.

11-2503. Disbarment upon conviction of crime;

Sec.

procedure for censure, suspension, or disbarment.

11-2504. Censure, suspension, or disbarment by other courts.

§ 11-2501. Admission to bar; regulations; prior admission.

(a) The District of Columbia Court of Appeals shall make such rules as it deems proper respecting the examination, qualification, and admission of persons to membership in its bar, and their censure, suspension, and expulsion.

(b) Members of the bar of the District of Columbia Court of Appeals shall be eligible to practice in the District of Columbia courts.

(c) Members of the bar of the United States District Court for the District of Columbia in good standing on April 1, 1972, shall be automatically enrolled as members of the bar of the District of Columbia Court of Appeals, and shall be subject to its disciplinary jurisdiction.

(July 29, 1970, 84 Stat. 521, Pub. L. 91-358, title I, § 111.)

Cross references. — Regulated non-health related occupations and professions, general license law, see § 47-2853.04.

Section references. — This section is referred to in § 47-1814.01. This section is referred to in § 47-2853.04.

Prior Codifications. — 1981 Ed., § 11-2501.

1973 Ed., § 11-2501.

CASE NOTES

ANALYSIS

Bar exam.

Bar Counsel immunity.

District Court jurisdiction.

Equal protection.

Felons.

Good moral character.

In general.

Independent investigations by Committee on Admissions.

Injunctions.

Judicial review, generally.

Post-examination review procedure.

Sovereign immunity.

Supreme Court review.

Bar exam.

Committee on Admission's finding that bar applicant, who was convicted for sale of narcotics and conspiracy to sell narcotics 20 years earlier, was presently fit to practice law was supported by evidence that applicant had overcome drug-related problems which led to his

criminal activity, applicant was exemplary inmate while incarcerated, and applicant had been employed in various legal and nonlegal jobs indicating his rehabilitation. In re Manville, 538 A.2d 1128, 1988 D.C. App. LEXIS 43 (1988).

Committee on Admissions' essay-type examination had a rational relationship to practice of law and, thus, passing of such examination was a valid prerequisite to admission to the bar. Harper v. District of Columbia Committee on Admissions, 375 A.2d 25, 1977 D.C. App. LEXIS 331 (1977).

Committee on Admissions' essay-type questions in bar examination were shown not to have been constructed, administered or graded in discriminatory manner; petitioners failed to raise a colorable constitutional claim entitling them to a hearing in regard to their allegation that the examination, as constructed, contained a cultural bias against blacks as a group. D.C. Code Court of Appeals Rules, rule 46, pt. I(b)(6). Harper v. District of Columbia Commit-

tee on Admissions, 375 A.2d 25, 1977 D.C. App. LEXIS 331 (1977).

Bar Counsel immunity.

Under District of Columbia law, members of Office of Bar Counsel were entitled to absolute immunity from federal and state civil rights liability arising from their decision not to initiate formal disciplinary proceedings against attorney as result of former client's complaints, where members acted only in their official capacity, decision was judicial in nature, and client retained right to seek review of decision. *Nwachukwu v. Rooney*, 362 F.Supp.2d 183, 2005 U.S. Dist. LEXIS 3293 (2005).

District Court jurisdiction.

To extent that applicants mounted general challenge to constitutionality of District of Columbia bar admission rule requiring applicants to have graduated from law school approved by American Bar Association, District Court for the District of Columbia had subject-matter jurisdiction over complaints challenging decision of District of Columbia Court of Appeals. D.C. Court of Appeals Rule 46, Pt. I(b)(3). *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206, 1983 U.S. LEXIS 150 (U.S. Dist. Col. 1983).

District Court had exclusive original jurisdiction over federal antitrust claims and thus erroneously dismissed antitrust claims on ground that they had been resolved by District of Columbia Court of Appeals when it considered plaintiff's petition for waiver of rule which prohibited plaintiff from sitting for District of Columbia bar examination. *Feldman v. Gardner*, 661 F.2d 1295, 1981 U.S. App. LEXIS 11155 (C.A.D.C. 1981), vacated by, remanded by 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206, 1983 U.S. LEXIS 150, 51 U.S.L.W. 4285 (1983).

Proceedings before District of Columbia Court of Appeals with respect to petitions for waiver of rule governing qualification for sitting for District of Columbia bar examination were of a nonjudicial character and therefore did not produce in either a judgment reviewable exclusively by United States Supreme Court; thus, plaintiffs' district court suits challenging validity of rule were jurisdictionally appropriate for consideration and disposition of their constitutional claims. *Feldman v. Gardner*, 661 F.2d 1295, 1981 U.S. App. LEXIS 11155 (C.A.D.C. 1981), vacated by, remanded by 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206, 1983 U.S. LEXIS 150, 51 U.S.L.W. 4285 (1983).

District court was without subject-matter jurisdiction over claim by unsuccessful applicant to District of Columbia Bar challenging grading of her Bar examination, because such challenges involve review of an exercise of judicial

power by the Court of Appeals, even though her claim was based on alleged deprivations of federally protected due process of law and equal protection rights. U.S. Const. Amend. 5. *Powell v. Nigro*, 543 F. Supp. 1044, 1982 U.S. Dist. LEXIS 13740 (1982), remanded without opinion by 711 F.2d 420, 229 U.S. App. D.C. 142 (1983).

Claim by unsuccessful applicant for admission to District of Columbia Bar challenging legislative or rulemaking authority of Court of Appeals by arguing that District of Columbia Bar examination, as constructed, discriminates against blacks, failed to present a substantial federal question. *Powell v. Nigro*, 543 F. Supp. 1044, 1982 U.S. Dist. LEXIS 13740 (1982), remanded without opinion by 711 F.2d 420, 229 U.S. App. D.C. 142 (1983).

District of Columbia Court of Appeals had exclusive jurisdiction of action by bar applicant against testing service, which scored multistate bar examination, challenging the correctness of grading of such examination since any award which might have directed testing service to disclose materials and any award premised upon a failure to disclose would necessarily call into question validity of policies of Court of Appeals and its committee on admissions against such disclosure. D.C. Code § 11-2501; D.C. Code Court of Appeals Rules, rule 46, subd. 1(a, b), (b)(7)(iii), (b)(8); D.C. Code SCR, Civil Rule 43(e). *Kennedy v. Educational Testing Service, Inc.*, 393 A.2d 523, 1978 D.C. App. LEXIS 345 (1978).

Equal protection.

Requirement that an applicant for admission to bar receive a score of at least 70 percent on essay-type examination was a reasonable requirement and, thus, did not deny equal protection. *Harper v. District of Columbia Committee on Admissions*, 375 A.2d 25, 1977 D.C. App. LEXIS 331 (1977).

Felons.

Rule denying bar admission to all applicants who have felony convictions might contravene constitutional guarantees of due process or equal protection of laws, and such rule might be found to be overinclusive and not sufficiently related to legitimate state ends to justify its use. U.S. Const. Amends. 5, 14. *In re Manville*, 538 A.2d 1128, 1988 D.C. App. LEXIS 43 (1988).

Court can adopt rule for admission of applicants who have committed felonies that differs from rule it employs in connection with application for readmission of former attorney who was disbarred for committing felony. D.C. Code 1981, § 11-2501(a). *In re Manville*, 538 A.2d 1128, 1988 D.C. App. LEXIS 43 (1988).

There is no per se rule excluding former felons from District of Columbia Bar. *In re*

Manville, 538 A.2d 1128, 1988 D.C. App. LEXIS 43 (1988).

Bar applicant, who was convicted of voluntary manslaughter ten years earlier, met burden of proving by preponderance of evidence that he had overcome serious misconduct of past and was now sufficiently rehabilitated to be morally fit to practice law; witnesses attested to applicant's possession of concern for rights of others and strong sense of fairness and dedication to judicial process, independent investigation conducted by Committee on Admissions confirmed that applicant was thoroughly rehabilitated, applicant demonstrated sincere remorse over past, and applicant attempted to atone for his past by dedicating life to improving lot of prisoners. In re Manville, 538 A.2d 1128, 1988 D.C. App. LEXIS 43 (1988).

Bar applicant with background of conviction of felony or other serious crime must carry very heavy burden in order to establish good moral character. In re Manville, 538 A.2d 1128, 1988 D.C. App. LEXIS 43 (1988).

Committee on Admission's finding that bar applicant, who had attempted to rob bank 17 years earlier, had sufficiently demonstrated his moral character and fitness to practice law was supported by evidence that people who had known applicant described single criminal incident in his life as aberration in otherwise unblemished record, criminal episode occurred when applicant was emotionally immature, and applicant had conducted himself commendably since criminal episode as evidenced by prison, college, law school, and employment records. In re Manville, 538 A.2d 1128, 1988 D.C. App. LEXIS 43 (1988).

Applicant's conviction of homicide does not per se require denial of admission to the bar. Court of Appeals Rule 46. In re Manville, 494 A.2d 1289, 1985 D.C. App. LEXIS 422 (1985).

Applicant for admission to the bar who had previously committed homicide in the course of burglary and had engaged in continuous pattern of criminal and antisocial conduct for over two years prior to homicide was not required to prove by clear and convincing evidence that he was rehabilitated, but applicant had heavy burden to demonstrate by preponderance of the evidence that he was qualified and fit to practice law, in view of prior felony conviction. In re Manville, 494 A.2d 1289, 1985 D.C. App. LEXIS 422 (1985).

A candidate for admission to Bar who knowingly pleads guilty to crime of receiving stolen goods and does not honor commitments and obligations fails to carry his required burden of demonstrating he is qualified for admission to Bar. D.C. Code Court of Appeals Rules, rule 46, pt. I(e). In re Heller, 333 A.2d 401, 1975 D.C. App. LEXIS 334 (1975), writ of certiorari denied by 423 U.S. 840, 96 S. Ct. 70, 46 L. Ed. 2d 59, 1975 U.S. LEXIS 2470 (1975).

Applicants for admission to the bar who have been convicted of crimes of moral turpitude are required to have finished serving their sentences, including any parole terms, before they can be found fit to engage in the practice of law. In re Dortch, 860 A.2d 346, 2004 D.C. App. LEXIS 563 (2004).

Applicant could not demonstrate by clear and convincing evidence that he was fit to assume responsibilities and be accorded privileges of an officer of the court, where applicant was on parole for second-degree murder, attempted armed robbery, and conspiracy at time of his application to the bar. In re Dortch, 860 A.2d 346, 2004 D.C. App. LEXIS 563 (2004).

Passage of time between felony and application for admission to the state bar, alone, is insufficient to warrant admission. In re Dortch, 860 A.2d 346, 2004 D.C. App. LEXIS 563 (2004).

A prior criminal conviction does not necessarily require exclusion of an applicant from the bar for all time; such a per se rule of exclusion would collide with principle that good character and fitness of the applicant at time of application is the appropriate test. In re Dortch, 860 A.2d 346, 2004 D.C. App. LEXIS 563 (2004).

Good moral character.

Factors to be considered in evaluating moral fitness for admission to the bar of applicants with criminal backgrounds include: nature and character of offenses committed, number and duration of offenses, age and maturity of applicant when offenses were committed, social and historical context in which offenses were committed, sufficiency of punishment undergone and restitution made in connection with offenses, grant or denial of pardon for offenses committed, number of years that have elapsed since the last offense was committed, presence or absence of misconduct during period since last offense committed, applicant's current attitude about prior offenses, applicant's candor, sincerity and full disclosure in filings and proceedings on character and fitness, applicant's constructive activities and accomplishments subsequent to criminal convictions, and opinions of character witnesses about applicant's moral fitness. In re Dortch, 860 A.2d 346, 2004 D.C. App. LEXIS 563 (2004).

A conviction for a crime involving moral turpitude is conclusive evidence of a bar applicant's lack of good moral character at time of offense. In re Dortch, 860 A.2d 346, 2004 D.C. App. LEXIS 563 (2004).

"Character and fitness" test imposed on applicant for admission to the bar is two pronged; not only must applicant demonstrate requisite moral qualifications and learning in the law, but he also must show that his admission to practice of law will not be detrimental to integrity of the bar, administration of justice, or

public interest. In *re Dortch*, 860 A.2d 346, 2004 D.C. App. LEXIS 563 (2004).

Burden on applicant for admission to the bar of demonstrating, by clear and convincing evidence, that he possesses good moral character and general fitness to practice law is imposed for protection of prospective clients, and assurance of ethical, orderly, and efficient administration of justice. In *re Dortch*, 860 A.2d 346, 2004 D.C. App. LEXIS 563 (2004).

Applicant, who had previously been convicted of second-degree murder, attempted armed robbery, and conspiracy, failed to establish by clear and convincing evidence that he possessed requisite good moral character and general fitness for admission to the bar; applicant's conduct was product of neither inexperience nor immaturity, applicant's failure to make restitution undermined his claim of moral regeneration, and although applicant's law-abiding behavior over 30 years since he committed offense was some evidence of his rehabilitation, there was no substantial record of personal sacrifice, outstanding service to others, or similar ethical behavior on applicant's part that would tend to confirm his indisputable moral regeneration. In *re Dortch*, 860 A.2d 346, 2004 D.C. App. LEXIS 563 (2004).

Applicant, who sought admission to the bar after being suspended from practice of law in Indiana arising out of battery charges, failed to meet burden imposed on him of establishing by clear and convincing evidence that he possessed good moral character required in order to practice law in jurisdiction. In *re Wells*, 815 A.2d 771, 2003 D.C. App. LEXIS 23 (2003).

When faced with an applicant seeking membership in the bar who has engaged in the unauthorized practice of law, the Committee on Admissions' task is not to devise a punishment for that practice; instead, the Committee considers an applicant's unauthorized practice as a factor to evaluate in determining whether the applicant has satisfied the burden of demonstrating, by clear and convincing evidence, that he or she possesses the requisite good moral character and fitness to practice law required by statute. In *re Greenwald*, 808 A.2d 1231, 2002 D.C. App. LEXIS 597 (2002).

The Committee on Admissions does not believe that unauthorized practice of law should be a *per se* basis for denying an application for admission to the bar, but rather that the facts of each case should be evaluated to determine whether, considering the totality of circumstances, the applicant's unauthorized practice is reflective of character flaws that require denial of an application for admission. In *re Greenwald*, 808 A.2d 1231, 2002 D.C. App. LEXIS 597 (2002).

The admissions process to the bar should not treat unauthorized practice so severely that it

erects an insurmountable obstacle to attorneys who have violated prohibition against the unlicensed practice of law, but now wish to conform their conduct to the law by becoming members of the bar; however, if an applicant's unauthorized practice demonstrates character flaws that preclude his or her admission to the bar, Committee on Admissions will not hesitate to recommend that Court of Appeals deny an application. In *re Greenwald*, 808 A.2d 1231, 2002 D.C. App. LEXIS 597 (2002).

Attorney seeking admission to the bar had good faith basis for believing that federal practice exception to prohibition against unlicensed practice of law applied to attorney's practice of international trade law, and thus, no negative conclusion could be drawn concerning attorney's character based on such conduct, where attorney and his colleagues testified that they did not believe that attorney was legally obligated to be a member of the District of Columbia Bar in order to practice before federal agencies which did not require a party's representative to be a member of any bar. In *re Greenwald*, 808 A.2d 1231, 2002 D.C. App. LEXIS 597 (2002).

"Non-trade" work performed by attorney without admission to the District of Columbia (D.C.) Bar was so remote in time that such work could not form basis for a negative conclusion about attorney's present moral character and fitness to practice law, for purposes of admission to the bar, where such legal work consisted of rendering assistance on one matter more than 14 years earlier. In *re Greenwald*, 808 A.2d 1231, 2002 D.C. App. LEXIS 597 (2002).

Attorney seeking admission to the bar acted with an honest, albeit mistaken, belief that attorney was not required to be admitted to the District of Columbia (D.C.) Bar in order for attorney to represent parties before foreign tribunals dealing with international trade matters, even though attorney was giving advice from law office in D.C., and thus, no negative conclusion could be drawn concerning attorney's character based on such conduct, where foreign tribunals did not require a party's representative to be an attorney. In *re Greenwald*, 808 A.2d 1231, 2002 D.C. App. LEXIS 597 (2002).

Determination by the Committee on the Unauthorized Practice of Law (CUPL) that attorney demonstrated an "apparent lack of candor" in his application for admission to the bar based on his omission of complete description of attorney's areas of practice, did not warrant a negative determination about attorney's character, where statement giving alleged incomplete description was not a response to a question asking for a complete description of attorney's practice, but rather an unsolicited addendum to a list of references, and attorney

accurately described the nature of his practice in all material respects when CUPL inquired about it, including his work before foreign tribunals. In re Greenwald, 808 A.2d 1231, 2002 D.C. App. LEXIS 597 (2002).

Although attorney seeking admission to the bar did not initially disclose his "non-trade work" to Committee on the Unauthorized Practice of Law (CUPL) in his application for admission to the bar, omission of such work was not material, and thus did not reflect adversely on attorney's character, where such "non-trade work" consisted of one matter that was more than 14 years old and another matter that did not involve the giving of legal advice. In re Greenwald, 808 A.2d 1231, 2002 D.C. App. LEXIS 597 (2002).

Attorney's lack of diligence in ascertaining whether his practice of law required admission to the District of Columbia's (D.C.) Bar did not give rise to conclusion that attorney did not possess good moral character and fitness to practice law as required for admission to the bar, where such lack of diligence was outweighed by attorney's good faith belief that his actions were proper, attorney's candid acknowledgement that his belief was mistaken, attorney's reputation for insisting upon honest disclosure of required information by his clients, attorney's transmission of that value to those work with him, attorney's contributions as a teacher to law students, and the favorable opinions of his character offered by attorneys and others who worked with him or observed his work over the years. In re Greenwald, 808 A.2d 1231, 2002 D.C. App. LEXIS 597 (2002).

In determining whether bar applicant should be admitted, good character at time of application is appropriate test. In re Manville, 538 A.2d 1128, 1988 D.C. App. LEXIS 43 (1988).

In determining whether applicant has the good moral character required for admission to the bar, evidence of prior criminal convictions usually suggests unfitness and should be considered in the overall assessment, but evidence of applicant's reform and rehabilitation must also be taken into account. Court of Appeals Rule 46. In re Manville, 494 A.2d 1289, 1985 D.C. App. LEXIS 422 (1985).

Factors to be considered in determining moral fitness for admission to the bar of applicants whose backgrounds are tainted by prior criminal convictions include: nature and character of offenses committed, number and duration of offenses, age and maturity of applicant at the time offenses were committed, social and historical context in which offenses were committed, sufficiency of punishment undergone and restitution made, grant or denial of pardon, number of years that have elapsed since the last offense was committed, presence or absence of misconduct during period since last offense committed, applicant's current attitude

about prior offenses, applicant's candor, sincerity and full disclosure in filings and proceedings on character and fitness, applicant's constructive activities and accomplishments subsequent to criminal convictions, and opinions of character witnesses about applicant's moral fitness. In re Manville, 494 A.2d 1289, 1985 D.C. App. LEXIS 422 (1985).

Good moral character requisite to applicant's admission to the bar is composed of respect for the rights of others and for the law, fairness, trustworthiness, reliability, and professional commitment to the judicial process and the administration of justice. Court of Appeals Rule 46. In re Manville, 494 A.2d 1289, 1985 D.C. App. LEXIS 422 (1985).

Although term "good moral character" is term of broad dimensions and can be defined in many ways, no better test for purpose of admission to Bar is known and a candidate for admission to bar must meet such standard. D.C. Code Court of Appeals Rules, rule 46, pt. I(e). In re Heller, 333 A.2d 401, 1975 D.C. App. LEXIS 334 (1975), writ of certiorari denied by 423 U.S. 840, 96 S. Ct. 70, 46 L. Ed. 2d 59, 1975 U.S. LEXIS 2470 (1975).

In general.

State courts, including courts of District of Columbia, possess exclusive authority to regulate admission to their respective state bars, and bear responsibility for disciplining errant bar members. Doe v. Board on Professional Responsibility of District of Columbia Court of Appeals, 717 F.2d 1424, 1983 U.S. App. LEXIS 16861 (C.A.D.C. 1983).

Whether graduation from accredited law school is to be required for admission to bar, as reasonable measure to maintain high standards in legal profession, is decision for state accrediting agencies and highest courts of states to make. Hickey v. District of Columbia Court of Appeals, 457 F. Supp. 584, 1978 U.S. Dist. LEXIS 16430 (1978).

It is appropriate to consider the public perception of and confidence in the bar when determining the fitness of original applicants to practice law. In re Dortch, 860 A.2d 346, 2004 D.C. App. LEXIS 563 (2004).

Applicant for admission to the bar who was presently disbarred in a sister jurisdiction was not entitled to grant of admission application. In re Mbakpuo, 829 A.2d 217, 2003 D.C. App. LEXIS 478 (2003).

The Court of Appeals has the inherent and exclusive authority to define and regulate the practice of law in the District of Columbia. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

The Court of Appeals exercises some, but not exclusive, authority over the unauthorized

practice of law by nonlawyers. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Federal government's power to authorize nonlawyers to practice before federal agencies does not oblige the Court of Appeals to allow persons in the District of Columbia to provide false or misleading information about their authority to practice law in any context, including appearances before federal administrative or regulatory agencies. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Injunction prohibiting nonlawyer from misrepresenting his qualifications to practice before District of Columbia agencies did not bar him from practicing before those agencies that permitted nonlawyer representation. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Whether applicant shall be admitted to the bar is ultimately for Court of Appeals to decide. Court of Appeals Rules 46, 46(f)(4). In re Manville, 494 A.2d 1289, 1985 D.C. App. LEXIS 422 (1985).

A court has an inherent right to make rules governing the practice of law before it and to promulgate rules concerning who may practice law before it. (Per Yeagley, J., with one Judge concurring in the result and another Judge concurring in part.) D.C. Code § 11-921(a)(2); D.C. Code SCR, Civil Rule 101; D.C. Code Court of Appeals Rules, Bar Rule 13. J. H. Marshall & Associates, Inc. v. Burleson, 313 A.2d 587, 1973 D.C. App. LEXIS 411 (1973).

A court has inherent power, by virtue of its existence as part of judicial system, to regulate and control the practice of law and to protect the public and the administration of justice by forbidding the unwarranted intrusion of unauthorized and unskilled persons into the practice of law. (Per Yeagley, J., with one Judge concurring in the result and another Judge concurring in part.) D.C. Code § 11-921(a)(2); D.C. Code SCR, Civil Rule 101; D.C. Code Court of Appeals Rules, Bar Rule 13. J. H. Marshall & Associates, Inc. v. Burleson, 313 A.2d 587, 1973 D.C. App. LEXIS 411 (1973).

Independent investigations by Committee on Admissions.

In cases where bar applicant has committed felony or other serious crime, Committee on Admissions ordinarily should arrange for independent investigation of applicant, and independent investigation should be dispensed with only when nature of crime and surrounding

circumstances, together with other information concerning applicant, satisfies Committee that investigation would turn up no substantial adverse information. In re Manville, 538 A.2d 1128, 1988 D.C. App. LEXIS 43 (1988).

Committee on Admissions has inherent power to conduct independent investigations in processing and considering applications for admission to the bar, and can incur the expenses necessary to do so. In re Manville, 494 A.2d 1289, 1985 D.C. App. LEXIS 422 (1985).

Independent investigations by Committee on Admissions are necessary under some circumstances to make adequate record of proceeding for application for admission to the bar. Court of Appeals Rule 46. In re Manville, 494 A.2d 1289, 1985 D.C. App. LEXIS 422 (1985).

In cases where applicant for admission to the bar has committed felony or other serious crime, the Committee on Admissions should weigh the need for independent investigation, and should not rely entirely on ex parte procedure where serious issue of fact concerning the applicant's fitness and moral character must be resolved. Bar Rule XI, § 15(2). In re Manville, 494 A.2d 1289, 1985 D.C. App. LEXIS 422 (1985).

Commission on Admissions must conduct independent investigation which would inquire of public authorities, colleagues, acquaintances and neighbors of applicant, and persons who knew applicant before his imprisonment, to ascertain whether applicant for admission to the bar has qualities of personality and behavior that bespeak rehabilitation and good moral character, where applicant had previously committed crime of homicide. Court of Appeals Rule 46. In re Manville, 494 A.2d 1289, 1985 D.C. App. LEXIS 422 (1985).

Attorney, who had been disbarred in another state, was entitled to a hearing before the Committee on Admissions (COA) on his application for admission to the Bar; attorney contended that an exception to the reciprocal discipline rule applied and that the discipline imposed in other state was substantially more severe than the sanction that would have been imposed had attorney committed misconduct within state. In re Ramos, 860 A.2d 843, 2004 D.C. App. LEXIS 576 (2004).

Injunctions.

In view of unlikelihood that plaintiff, suing to compel his admission to District of Columbia Bar notwithstanding rule requiring graduation from law school accredited by American Bar Association, would prevail on merits, fact that he requested preliminary injunctive relief of mandatory nature, and facts that it would disturb status quo and would be directed against highest court of District of Columbia, he failed to demonstrate entitlement to preliminary injunctive relief. D.C. Code Court of Ap-

peals Rules, rules 46, 46, pt. I(b)(3, 4); D.C. Code § 11-101 et seq. *Hickey v. District of Columbia Court of Appeals*, 457 F. Supp. 584, 1978 U.S. Dist. LEXIS 16430 (1978).

Injunction requiring nonlawyer to provide accurate information to prospective clients about his qualifications to practice before administrative agencies and prohibiting him from providing information that was false or misleading in regard to his authority to practice law was well within inherent and exclusive authority of the Court of Appeals to define and regulate the practice of law in the District of Columbia. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Government presented sufficient evidence to warrant a finding of criminal contempt against nonlawyer for violating injunctions against unauthorized practice of law, including evidence that nonlawyer had referred to himself as a former administrative law judge in publication and advertisement, and that nonlawyer induced client to believe she was being represented by attorney. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Upon adjudging a person in civil contempt for disobeying an injunction against the unauthorized practice of law, the Court of Appeals could order the person to pay attorney fees of members of Committee on Unauthorized Practice of Law (CUPL); no conflict of interest or appearance thereof was sufficient in members' instituting and litigating civil contempt proceedings to prohibit award of attorney fees. In re Banks, 805 A.2d 990, 2002 D.C. App. LEXIS 506 (2002), writ of certiorari denied by 539 U.S. 927, 123 S. Ct. 2577, 156 L. Ed. 2d 604, 2003 U.S. LEXIS 4620, 71 U.S.L.W. 3774 (2003).

Judicial review, generally.

Although District of Columbia has no statutorily established procedure for petitioning Court of Appeals for review of final determination of Committee of Admissions denying certification that an applicant has passed the Bar examination, the Court of Appeals nevertheless does accept and consider petitions for review. *Powell v. Nigro*, 543 F. Supp. 1044, 1982 U.S. Dist. LEXIS 13740 (1982), remanded without opinion by 711 F.2d 420, 229 U.S. App. D.C. 142 (1983).

There is a fundamental distinction between two types of claims potentially brought in federal courts by unsuccessful applicant to District of Columbia Bar; first type of claim involves review of legislative or rulemaking authority of state's highest court and thus may fall within

jurisdiction of federal courts, while second type of claim involves review of an exercise of judicial power by the state's highest court and thus falls outside jurisdiction of federal courts because only subject to review by petitioning the Supreme Court of the United States for writ of certiorari. *Powell v. Nigro*, 543 F. Supp. 1044, 1982 U.S. Dist. LEXIS 13740 (1982), remanded without opinion by 711 F.2d 420, 229 U.S. App. D.C. 142 (1983).

Court of Appeals draws a distinction, in attorney disciplinary proceedings, between false statements made by an attorney during a disciplinary investigation and false statements made by an attorney during the bar application process. In re Demos, 875 A.2d 636, 2005 D.C. App. LEXIS 262 (2005).

Rather than taking the view that prior serious misconduct invariably requires disqualification, Court of Appeals considers the facts of each case in light of the totality of circumstances surrounding an application for bar admission; without minimizing or discounting adverse inferences to be drawn from an applicant's criminal record, Court of Appeals also takes evidence of reform and rehabilitation into account. In re Dortch, 860 A.2d 346, 2004 D.C. App. LEXIS 563 (2004).

Although Court of Appeals affords the Committee's recommendations of Committee on Admissions some deference, the ultimate decision regarding admission or denial of admission to the bar remains for Court of Appeals to make. In re Dortch, 860 A.2d 346, 2004 D.C. App. LEXIS 563 (2004).

When evaluating applications for admission to the bar, an appellate court affords some deference to recommendations of the Committee on Admissions, making due allowance for the Committee's opportunity to observe and evaluate demeanor of applicant where relevant, e.g., with regard to such attitudes as sincerity or remorse. In re Wells, 815 A.2d 771, 2003 D.C. App. LEXIS 23 (2003).

Ultimate decision regarding admission to the bar or denial of admission remains for an appellate court to make. In re Wells, 815 A.2d 771, 2003 D.C. App. LEXIS 23 (2003).

In reviewing application for admission to the bar, Court of Appeals accepts findings of fact made by Committee on Admissions, unless they are unsupported by substantial evidence of record, makes due allowance for the Committee's opportunity to observe and evaluate the demeanor of the applicant, and affords the Committee's recommendations some deference. Court of Appeals Rules 46, 46(f)(4); Bar Rule XI, § 7(3). In re Manville, 494 A.2d 1289, 1985 D.C. App. LEXIS 422 (1985).

Post-examination review procedure.

All unsuccessful applicants, who took bar examinations given in July 1973 and in Febru-

ary and July of 1974, would be permitted by Court of Appeals to utilize committee on admissions' post-examination review procedure, which was effective as of May 1975, if such applicants applied to Committee in writing within 60 days of issuance of Court's opinion. D.C. Code § 11-2501; D.C. Code Court of Appeals Rules, rule 46. *Harper v. District of Columbia Committee on Admissions*, 375 A.2d 25, 1977 D.C. App. LEXIS 331 (1977).

Sovereign immunity.

Whether admission to state's bar is regulated by state legislature or by state court endowed with ultimate authority to do so, regulatory act brings to bear sovereignty of the state and immunity from federal antitrust liability attaches. *Feldman v. Gardner*, 661 F.2d 1295, 1981 U.S. App. LEXIS 11155 (C.A.D.C. 1981), vacated by, remanded by 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206, 1983 U.S. LEXIS 150, 51 U.S.L.W. 4285 (1983).

District of Columbia Court of Appeals, the ultimate body wielding governmental power over the practice of law in the District of Columbia, acts in a sovereign governmental capacity when it sets and enforces educational prerequisites for admission to bar examination, and thus District of Columbia Court of Appeals may not be sued for alleged antitrust violations by reason of its adoption of rule limiting admission to bar examination to candidates who have completed prescribed minimum of education in an American Bar Association-accredited law school. *Feldman v. Gardner*, 661 F.2d 1295, 1981 U.S. App. LEXIS 11155 (C.A.D.C. 1981), vacated by, remanded by 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206, 1983 U.S. LEXIS 150, 51 U.S.L.W. 4285 (1983).

Under District of Columbia law, members of Office of Bar Counsel were entitled to absolute immunity from federal and state civil rights liability arising from their decision not to initiate formal disciplinary proceedings against attorney as result of former client's complaints, where members acted only in their official capacity, decision was judicial in nature, and client retained right to seek review of decision. *Nwachukwu v. Rooney*, 362 F.Supp.2d 183, 2005 U.S. Dist. LEXIS 3293 (2005).

Under District of Columbia law, professional disciplinary violations arise from attorney's malfeasance, not actual harm imposed on client. *Nwachukwu v. Rooney*, 362 F.Supp.2d 183, 2005 U.S. Dist. LEXIS 3293 (2005).

Supreme Court review.

Proceedings before District of Columbia Court of Appeals on petitions asking for waivers of that court's District of Columbia bar admission rule requiring applicants to have graduated from law school approved by American Bar Association were judicial in nature, in that they involved judicial inquiry in which court was called upon to investigate, declare and enforce liabilities as they stood on present or past facts and under laws supposed already to exist, and therefore, to extent that review was sought of District of Columbia Court of Appeals' denial of petitions for waiver, District Court for District of Columbia lacked subject-matter jurisdiction over complaints; review should have been sought in the United States Supreme Court. 18 U.S.C. § 1257; D.C. Court of Appeals Rule 46, Pt. I(b)(3). *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206, 1983 U.S. LEXIS 150 (U.S. Dist. Col. 1983).

Denials of petitions for waiver of rule governing qualifications for taking bar examination did not become judicial orders reviewable exclusively by United States Supreme Court simply because District of Columbia Court of Appeals, the tribunal issuing the denials, ordinarily functioned as a court, nor was fact that pronouncement on waiver petitions were denominated per curiam orders dispositive. *Feldman v. Gardner*, 661 F.2d 1295, 1981 U.S. App. LEXIS 11155 (C.A.D.C. 1981), vacated by, remanded by 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206, 1983 U.S. LEXIS 150, 51 U.S.L.W. 4285 (1983).

Decision of Court of Appeals on petition for review of final determination of Committee on Admissions denying certification that an applicant has passed the Bar examination is subject to review by petitioning Supreme Court of United States for certiorari. *Powell v. Nigro*, 543 F. Supp. 1044, 1982 U.S. Dist. LEXIS 13740 (1982), remanded without opinion by 711 F.2d 420, 229 U.S. App. D.C. 142 (1983).

§ 11-2502. Censure, suspension, or disbarment for cause.

The District of Columbia Court of Appeals may censure, suspend from practice, or expel a member of its bar for crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or conduct prejudicial to the administration of justice. A fraudulent act or misrepresentation by an applicant in connection with this application or admission is sufficient cause for the revocation by the court of such person's admission.

(July 29, 1970, 84 Stat. 521, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(112), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-2502. 1973 Ed., § 11-2502.

CASE NOTES

ANALYSIS

Board of Professional Responsibility.
Censure.

Construction and application.

Disbarment.

Double jeopardy.

Evidence.

Ex post facto.

Grounds for discipline.

—Commingling of funds, grounds for discipline.

—Conduct prejudicial to administration of justice, grounds for discipline.

—Conflict of interest, grounds for discipline.

—Contempt of court, grounds for discipline.

—Criminal conduct, grounds for discipline.

—Deception of court or obstruction of administration of justice, grounds for discipline.

—Failure to notify, grounds for discipline.

—Falsification or alteration of records or papers, grounds for discipline.

—In general.

—Misappropriation and failure to account, grounds for discipline.

—Misconduct in other than professional capacity, grounds for discipline.

—Neglect, grounds for discipline.

—Protection or loyalty to client, grounds for discipline.

—Unauthorized practice, grounds for discipline.

—Unreasonable fees, grounds for discipline.

In general.

Judgmental immunity.

Law applicable.

Mitigating factors.

Negotiated attorney discipline.

Practice and procedure.

Presumptions and burden of proof.

Probation.

Reciprocal discipline.

Reinstatement.

Remand.

Review.

Suspension.

Board of Professional Responsibility.

In reciprocal attorney discipline case, bar counsel and the Board on Professional Responsibility may rely upon the “substantially different discipline” exception when arguing for or recommending a greater sanction. In re Ditton,

954 A.2d 986, 2008 D.C. App. LEXIS 370 (2008).

Where no exception has been taken to Board on Professional Responsibility’s report and recommendation in attorney disciplinary proceeding, Court of Appeals gives heightened deference to Board’s recommendation. In re Steinberg, 953 A.2d 306, 2008 D.C. App. LEXIS 289 (2008).

Board on Professional Responsibility had personal jurisdiction over attorney in attorney discipline case, under rule providing that all bar members were subject to the disciplinary jurisdiction of the Court of Appeals and its Board, even if attorney had not been personally served with specification of charges and petition instituting formal disciplinary proceedings, where attorney had actual notice of the charges against him; it was the rule, rather than service, that provided for jurisdiction of the Board and its hearing committee over a licensed attorney. In re Mitrano, 952 A.2d 901, 2008 D.C. App. LEXIS 297 (2008), writ of certiorari denied by 556 U.S. 1209, 129 S. Ct. 2064, 173 L. Ed. 2d 1134, 2009 U.S. LEXIS 3132, 77 U.S.L.W. 3594 (2009).

In an attorney discipline case, the Court of Appeals must accept subsidiary findings of fact by the hearing committee that are supported by substantial evidence in the record viewed as a whole. In re Mitrano, 952 A.2d 901, 2008 D.C. App. LEXIS 297 (2008), writ of certiorari denied by 556 U.S. 1209, 129 S. Ct. 2064, 173 L. Ed. 2d 1134, 2009 U.S. LEXIS 3132, 77 U.S.L.W. 3594 (2009).

In an attorney discipline proceeding, the Court of Appeals will impose the sanction recommended by the Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Mayers, 943 A.2d 1170, 2008 D.C. App. LEXIS 102 (2008).

When no exception has been taken by either the attorney or Bar Counsel to the Board on Professional Responsibility’s report and recommendation in a reciprocal discipline case, the Court of Appeals gives heightened deference to the Board’s recommendation. In re Roth, 905 A.2d 176, 2006 D.C. App. LEXIS 430 (2006).

Generally, if the sanction recommended by the Board on Professional Responsibility falls within a wide range of acceptable outcomes, it

will be adopted and imposed. In *re Park*, 894 A.2d 411, 2006 D.C. App. LEXIS 95 (2006).

Recommendation of Board on Professional Responsibility that attorney receive identical and reciprocal sanction of disbarment was entitled to heightened deference from Court of Appeals, where subject attorney took no exception to Board's report and recommendation. In *re Gruber*, 889 A.2d 991, 2005 D.C. App. LEXIS 649 (2005).

Court of Appeals' deference to report and recommendation of Board on Professional Responsibility in attorney disciplinary proceeding was heightened, where neither bar counsel nor subject attorney opposed report and recommendation. In *re Gruber*, 889 A.2d 991, 2005 D.C. App. LEXIS 649 (2005).

Where no exceptions have been filed, the Court of Appeals gives great deference to the recommendation by the Board on Professional Responsibility. In *re Gizzarelli*, 888 A.2d 1154, 2005 D.C. App. LEXIS 640 (2005).

Decision on sanction in an attorney disciplinary matter is committed, in the final analysis, to the discretion of the Court of Appeals. In *re Cater*, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

Determination of appropriate standard for imposing fitness requirement for reinstatement in attorney disciplinary proceedings involving suspension was legal question for resolution by Court of Appeals. In *re Cater*, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

Court of Appeals gives heightened deference to the recommendation of the Board on Professional Responsibility in attorney disciplinary cases in which no exception has been taken. In *re Smith*, 886 A.2d 75, 2005 D.C. App. LEXIS 541 (2005).

Court of Appeals will accept the findings of the Board on Professional Responsibility in an attorney disciplinary proceeding as long as they are supported by substantial evidence in the record. In *re Mendoza*, 885 A.2d 317, 2005 D.C. App. LEXIS 544 (2005).

Court of Appeals would give heightened deference to report and recommendation of Board on Professional Responsibility in attorney disciplinary case, where subject attorney did not file any exceptions thereto. In *re Mendoza*, 885 A.2d 317, 2005 D.C. App. LEXIS 544 (2005).

Where no exception has been taken to Report and Recommendation by Board on Professional Responsibility, the Supreme Court gives heightened deference to the Board's recommendation. In *re Ras*, 884 A.2d 44, 2005 D.C. App. LEXIS 498 (2005).

Although recommended sanction of Board on Professional Responsibility is given considerable deference in attorney discipline proceedings, the ultimate choice of sanction is for Court of Appeals to decide. In *re Artis*, 883 A.2d 85, 2005 D.C. App. LEXIS 473 (2005).

In attorney discipline proceedings, recommended sanction of Board on Professional Responsibility comes to Court of Appeals with a strong presumption in favor of its imposition. In *re Artis*, 883 A.2d 85, 2005 D.C. App. LEXIS 473 (2005).

In disciplinary proceedings, Court of Appeals will accept factual findings of Board on Professional Responsibility unless they are not supported by substantial evidence in the record and will adopt its recommended sanction unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In *re Artis*, 883 A.2d 85, 2005 D.C. App. LEXIS 473 (2005).

Where neither Bar Counsel nor the attorney has opposed the imposition of identical reciprocal discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline. In *re Hagendorf*, 881 A.2d 616, 2005 D.C. App. LEXIS 455 (2005).

Since neither Bar Counsel nor attorney had filed any exceptions to the report and recommendation of the Board on Professional Responsibility in reciprocal disciplinary action, appellate court would give great deference to the Board's recommendation, and appellate court's deference was not diminished by the fact that the recommended sanction was substantially different from the sanction imposed by Maryland. In *re Parshall*, 878 A.2d 1253, 2005 D.C. App. LEXIS 388 (2005).

Where no exceptions to a report and recommendation filed by the Board on Professional Responsibility are filed, the Court of Appeals gives heightened deference to the Board's recommendation. In *re Parshall*, 878 A.2d 1253, 2005 D.C. App. LEXIS 388 (2005).

Comparing one case to another for purposes of determining appropriate discipline in an attorney disciplinary proceeding is an inherently imprecise process, and the expertise of the Board on Professional Responsibility in disciplinary matters is entitled to considerable deference. In *re Thyden*, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Board on Professional Responsibility has the authority, in reciprocal attorney disciplinary proceedings, to recommend greater discipline than that imposed by original disciplining court, and the Court of Appeals has the authority to impose it. In *re Demos*, 875 A.2d 636, 2005 D.C. App. LEXIS 262 (2005).

Where attorney did not contest the imposition of indefinite suspension as reciprocal discipline before the Board on Professional Responsibility and did not except to the Board's recommendation of indefinite suspension, the

Board's role in deciding whether to recommend identical reciprocal discipline was an exceptionally limited one, and, similarly, the Court of Appeals' consideration of the Board's recommendation was especially deferential. In *re Aldridge*, 873 A.2d 335, 2005 D.C. App. LEXIS 203 (2005).

A recommendation of the Board on Professional Responsibility in an attorney disciplinary proceeding with respect to a proposed sanction comes to the Court of Appeals with a strong presumption in favor of its imposition. In *re Anya*, 871 A.2d 1181, 2005 D.C. App. LEXIS 159 (2005).

Court of Appeals respects the Board on Professional Responsibility's recommendation in attorney disciplinary case unless the recommendation is patently unreasonable or is materially inconsistent with the sanctions that Court has imposed in comparable cases, and in the final analysis, the choice of appropriate sanction is the responsibility and duty of Court. In *re Edwards*, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

Court of Appeals imposes the sanction recommended by the Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In *re Edwards*, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

In attorney disciplinary action, stipulation of facts upon which the hearing committee and the Board on Professional Responsibility relied were not void because of the three-year delay in the issuance of the Board's report and recommendation; there was no evidence in the record that attorney's stipulation was conditioned on a speedy disposition by the hearing committee, attorney did not contend that the stipulated facts were untrue, and there was no basis for concluding that attorney was prejudiced by the committee's inaction. In *re Edwards*, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

Board on Professional Responsibility's recommendation of a proposed sanction against attorney comes to Court of Appeals with a heavy presumption in its favor, and this presumption becomes even stronger and Court's review more deferential when no exceptions have been filed. In *re Edwards*, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

Board on Professional Responsibility's recommendation of a proposed sanction against attorney will be adopted by Court of Appeals unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In *re Edwards*, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

In deciding whether to adopt the attorney disciplinary sanctions recommendation by the Board of Professional Responsibility, the Court

of Appeals must examine the nature of the violation, aggravating and mitigating circumstances, the absence or presence of prior disciplinary sanctions, the moral fitness of the attorney, and the need to protect the legal profession, the courts, and the public. In *re Steele*, 868 A.2d 146, 2005 D.C. App. LEXIS 30 (2005).

So long as the attorney disciplinary sanction recommendation of the Board of Professional Responsibility falls within the wide range of acceptable outcomes, it comes to the Court of Appeals with a strong presumption in favor of its imposition. In *re Steele*, 868 A.2d 146, 2005 D.C. App. LEXIS 30 (2005).

The system of attorney discipline, including the imposition of sanctions, is the responsibility and duty of the Court of Appeals. In *re Steele*, 868 A.2d 146, 2005 D.C. App. LEXIS 30 (2005).

Report and disciplinary recommendation of Board of Professional Responsibility were entitled to heightened deference from Court of Appeals, where no exception was taken thereto. In *re Winick*, 866 A.2d 51, 2005 D.C. App. LEXIS 8 (2005).

In attorney discipline cases, Court of Appeals will impose the sanction recommended by the Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In *re Scanlon*, 865 A.2d 534, 2005 D.C. App. LEXIS 1 (2005).

While the Court of Appeals is required to accord substantial deference to the recommendation of the Board on Professional Responsibility, in the final analysis, the responsibility to discipline lawyers is the Court's. In *re Steinberg*, 864 A.2d 120, 2004 D.C. App. LEXIS 685 (2004).

Generally speaking, if the Board on Professional Responsibility's recommended sanction in an attorney discipline case falls within the wide range of acceptable outcomes, it will be adopted and imposed. In *re Austin*, 858 A.2d 969, 2004 D.C. App. LEXIS 432 (2004).

A sanction recommended by the Board on Professional Responsibility in an attorney discipline case comes to the Court of Appeals with a strong presumption in favor of its imposition. In *re Austin*, 858 A.2d 969, 2004 D.C. App. LEXIS 432 (2004).

Board on Professional Responsibility was under no obligation to accept unsworn affidavits proffered by attorney who was subject of disciplinary proceeding, where affidavits were proffered long after the record had closed. In *re Rivlin*, 856 A.2d 1086, 2004 D.C. App. LEXIS 409 (2004).

Court of Appeals' deference to the Board on Professional Responsibility in reciprocal attorney discipline cases is not diminished by the fact that the sanction recommended by the

Board is substantially different from the sanction imposed by the other jurisdiction. In *re Rivlin*, 856 A.2d 1086, 2004 D.C. App. LEXIS 409 (2004).

The Board on Professional Responsibility's recommended sanction, in an attorney disciplinary case, comes to the Court of Appeals with a strong presumption in favor of its imposition. In *re Soininen*, 853 A.2d 712, 2004 D.C. App. LEXIS 388 (2004).

Generally speaking, in an attorney disciplinary proceeding, if the Board on Professional Responsibility's recommended sanction falls within a wide range of acceptable outcomes, it will be adopted by the Court of Appeals and imposed. In *re Soininen*, 853 A.2d 712, 2004 D.C. App. LEXIS 388 (2004).

Although the Court of Appeals must give considerable deference to the Board on Professional Responsibility's recommendations in attorney disciplinary matters, the responsibility for imposing sanctions rests with the Court of Appeals in the first instance. In *re Soininen*, 853 A.2d 712, 2004 D.C. App. LEXIS 388 (2004).

Court of Appeals's deference to Board on Professional Responsibility's recommendation regarding attorney discipline was heightened, where neither Bar Counsel nor attorney opposed the Board's report and recommendation. In *re Abrahamson*, 852 A.2d 949, 2004 D.C. App. LEXIS 334 (2004).

Recommendation by Board of Professional Responsibility on petition for reinstatement is entitled to great weight, and Supreme Court's review is even more deferential where no party has filed an exception. In *re Matzkin*, 850 A.2d 310, 2004 D.C. App. LEXIS 276 (2004).

Unchallenged findings of Board of Professional Responsibility, that former attorney failed to present any evidence that he recognized his wrongdoing that had resulted in disbarment or had demonstrated ability to handle ethical rigors of practicing law, warranted adoption of Board's recommendation that petition for reinstatement to bar be denied. In *re Matzkin*, 850 A.2d 310, 2004 D.C. App. LEXIS 276 (2004).

Before an attorney is reinstated from a disciplinary suspension, the Court of Appeals must be independently satisfied that the criteria for reinstatement have been met; nevertheless, the Board on Professional Responsibility's (BPR) findings and recommendations are entitled to great weight. In *re Brown*, 845 A.2d 519, 2004 D.C. App. LEXIS 74 (2004).

The Court of Appeals gives less deference to recommendations of the Board on Professional Responsibility in reciprocal attorney discipline cases than in original proceedings, in light of the specific constraints in the Bar Rule governing reciprocal discipline. In *re Laibstain*, 841 A.2d 1259, 2004 D.C. App. LEXIS 49 (2004).

Attorney's failure to respond to requests for information from bar counsel and board on professional responsibility in connection with three separate investigations warranted 120-day suspension from practice of law. In *re Laibstain*, 841 A.2d 1259, 2004 D.C. App. LEXIS 49 (2004).

Generally speaking, if the Board of Professional Responsibility's recommended sanction falls within a wide range of acceptable outcomes, it will be adopted by the Court of Appeals and imposed. In *re Schlemmer*, 840 A.2d 657, 2004 D.C. App. LEXIS 1 (2004).

In the absence of any objection by attorney, the Court of Appeals' deferential review of the Board of Professional Responsibility's recommendation of reciprocal discipline is even more deferential. In *re Zackey*, 838 A.2d 313, 2003 D.C. App. LEXIS 710 (2003).

Attorney's failure to file any exception to Board of Professional Responsibility's report and recommendation was a concession that reciprocal disbarment was warranted. In *re Ain*, 837 A.2d 908, 2003 D.C. App. LEXIS 698 (2003).

In attorney disciplinary proceedings, the Court of Appeals will accept the Board on Professional Responsibility's findings as long as they are supported by substantial evidence in the record. In *re Powell*, 836 A.2d 579, 2003 D.C. App. LEXIS 694 (2003).

Attorney's failure to file any exception to the Board of Professional Responsibility's report and recommendation was a concession that reciprocal disbarment was warranted. In *re Dunietz*, 832 A.2d 161, 2003 D.C. App. LEXIS 564 (2003).

While the Board on Professional Responsibility's report on the imposition of reciprocal discipline comes to Court of Appeals in the form of a recommendation and while Court has ultimate responsibility for sanctioning members of the Bar, the Board's recommendation comes to Court with a strong presumption in favor of its correctness, and attorney bears a heavy burden to successfully establish claimed exceptions to reciprocal discipline. In *re Zdravkovich*, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

Assessing the credibility of witnesses is a matter left to the factfinder, which in attorney disciplinary proceedings is the hearing committee of the Board on Professional Responsibility. In *re Zdravkovich*, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

Any belief on part of bar admissions committee that attorney had not violated court rule prohibiting unauthorized practice of law did not deprive Board on Professional Responsibility of jurisdiction to consider allegation that attorney's pre-admission practice of law had violated such rule. In *re Starnes*, 829 A.2d 488, 2003 D.C. App. LEXIS 483 (2003).

Court of Appeals gives great deference to recommended sanctions by the Board of Professional Responsibility and generally endorses the Board's recommendation if it falls within an acceptable range. *In re Romansky*, 825 A.2d 311, 2003 D.C. App. LEXIS 305 (2003).

The actual imposition of discipline against attorneys is the task of the Court of Appeals alone, not the Board on Professional Responsibility; in the final analysis, the responsibility to discipline lawyers is the court's. *In re Edwards*, 808 A.2d 476, 2002 D.C. App. LEXIS 546 (2002).

In determining whether to accept the board of professional responsibility's disbarment recommendation, appellate court considers the nature of the violation, prior disciplinary sanctions, mitigating and aggravating circumstances, protection of the public, courts and the legal profession, and, to the extent it can be determined, the moral fitness of the attorney. *In re Corizzi*, 803 A.2d 438, 2002 D.C. App. LEXIS 388 (2002).

In reciprocal disciplinary cases, the level of deference accorded the Board on Professional Responsibility recommendations is less than in original proceedings, given that the Bar Rules create a rebuttable presumption that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction, unless the record affirmatively shows that a different sanction is warranted. *In re Sheridan*, 798 A.2d 516, 2002 D.C. App. LEXIS 84 (2002).

When deference is owed in the area of sanctions, that deference is owed to the Board on Professional Responsibility, not to Bar Counsel. *In re Kitchings*, 779 A.2d 926, 2001 D.C. App. LEXIS 188 (2001).

The Board on Professional Responsibility reviews the hearing committee's findings and conclusions to determine if the findings of fact are supported by substantial evidence of record, unless they are determinations of "ultimate facts," which are actually conclusions of law. *In re Travers*, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

District of Columbia Court of Appeals has sole authority to censure, suspend or disbar attorney in the District of Columbia, although Board on Professional Responsibility was established to aid court in its disciplinary function. *In re Kerr*, 611 A.2d 551, 1992 D.C. App. LEXIS 205 (1992).

Attorney, who complied with District of Columbia reporting requirements for maintaining active status membership, was "engaged in the practice of law within the District of Columbia" and was subject to disciplinary jurisdiction of Board of Professional Responsibility under District of Columbia Bar Rule providing disciplinary jurisdiction over any attorney who engages in the practice of law within the District of

Columbia. Bar Rule XI, § 1. *In re Wade*, 526 A.2d 936, 1987 D.C. App. LEXIS 364 (1987), writ of certiorari denied by 484 U.S. 1010, 108 S. Ct. 709, 98 L. Ed. 2d 659, 1988 U.S. LEXIS 166, 56 U.S.L.W. 3460 (1988).

Rule giving Board of Professional Responsibility authority comparable to that of an administrative agency to whose policies court will defer if action under review is within its statutory powers was not intended to confer upon Board greater authority than that possessed by administrative agencies, for, unlike agency action which is binding upon parties unless petition for judicial review is filed, disbarment, suspension, or censure of an attorney can be made effective only upon an order of District of Columbia Court of Appeals. D.C. Code §§ 11-2502, 11-2503(b). *In re Dwyer*, 399 A.2d 1, 1979 D.C. App. LEXIS 314 (1979).

Date of filing of disciplinary case, not date of acts under review, was determinative factor as to whether Disciplinary Board established in 1972 had jurisdiction to decide case. D.C. Code §§ 11-921, 11-2501(c); U.S. Dist. Ct. Rules Dist. of Col. 1961, Civil Rule 96. *In re Keiler*, 380 A.2d 119, 1977 D.C. App. LEXIS 250 (1977).

Censure.

Sanction of public censure was warranted for attorney, who treated flat fee provided by client's father as his own property without informed consent and who violated Rules of Professional Responsibility by commingling client funds with his own and by failing to promptly return fee when he was terminated, where determination that a flat fee was the property of a client unless the client gave informed consent to a different arrangement was one of first impression that applied prospectively, client's father understood that flat fee was the property of attorney despite lack of informed consent, attorney's commingling of client funds by mistakenly depositing a portion of the fees in client escrow account was a good faith mistake, attorney fully cooperated with Bar Counsel, attorney's two prior instances of discipline did not implicate moral character or integrity, and client did not act dishonestly or attempt to misappropriate client funds. *In re Mance*, 980 A.2d 1196, 2009 D.C. App. LEXIS 473 (2009).

Reciprocal discipline of public censure was appropriate sanction for attorney who received public reprimand in Maryland for his failure to act with reasonable diligence and promptness in representing client or to keep complete record of monies received, where attorney participated in Maryland proceedings, admitted to sufficiency of the evidence, and consented to the disciplinary action. *In re Page*, 938 A.2d 1, 2007 D.C. App. LEXIS 687 (2007).

Public censure was appropriate reciprocal discipline for attorney who violated ethical rules of foreign state by misrepresenting to

court that settlement negotiations had begun when in fact they had not, when seeking an extension of time to answer a complaint; rule violated by attorney was identical to District of Columbia Bar Rule, public censure was discipline imposed by the foreign state, and public censure was within range of appropriate sanctions. In re Robbins, 911 A.2d 1227, 2006 D.C. App. LEXIS 631 (2006).

Construction and application.

The term "dishonesty," as used in rule of professional conduct regarding engaging in conduct involving dishonesty, while encompassing fraud, deceit, and misrepresentation, also includes conduct evincing a lack of honesty, probity or integrity in principle or a lack of fairness and straightforwardness. In re Cleaver-Bascombe, 892 A.2d 396, 2006 D.C. App. LEXIS 29 (2006).

Disbarment.

Conduct of attorney, in violating Rules of Professional Conduct regarding the failure to return unearned fees, false or misleading statements on services, fraud or dishonest conduct, and serious interference with the administration of justice, warranted disbarment, where attorney promised to refund clients' money if she was unable to obtain religious-worker visas, attorney evaded clients' requests for information after she was unable to obtain the visas, clients resorted to government website to learn that their applications had been denied, attorney for several years failed to return clients' money as promised, clients' status as non-citizens made attorney's misconduct difficult to detect, attorney could not have obtained the promised visas without engaging in fraud, and attorney lied to her clients and Bar Counsel about the status of her efforts to make good on her refund obligations. In re Kanu, 5 A.3d 1, 2010 D.C. App. LEXIS 552 (2010).

Disbarment was appropriate sanction for attorney's cumulative misconduct, which included disobeying court orders, filing frivolous claims, engaging in disruptive conduct, and seriously interfering with the administration of justice, in connection with his representation of client, his efforts to disrupt foreclosure sale of his condominium apartment, and his fraudulent and dishonest conduct directed at his mother, who had been his principal client for the past ten to 15 years; attorney's pattern of predatory and deceitful conduct demonstrated his total contempt of his ethical obligations, the law, court rules and procedure, and even basic civility. In re Orci, 974 A.2d 891, 2009 D.C. App. LEXIS 240 (2009).

Attorney's misappropriation of funds of ward of the state for whom she acted as guardian and failure to cooperate in subsequent disciplinary proceedings warranted disbarment. In re Wil-

son, 953 A.2d 1052, 2008 D.C. App. LEXIS 356 (2008).

Attorney's intentional misappropriation and unauthorized use of client funds warranted disbarment, with reinstatement conditioned on restitution to clients in amount of \$36,930. In re Wilson, 953 A.2d 1052, 2008 D.C. App. LEXIS 356 (2008).

In virtually all cases of misappropriation in attorney discipline proceedings, disbarment will be the only appropriate action unless it appears that the misconduct resulted from nothing more than simple negligence. In re Mitrano, 952 A.2d 901, 2008 D.C. App. LEXIS 297 (2008), writ of certiorari denied by 556 U.S. 1209, 129 S. Ct. 2064, 173 L. Ed. 2d 1134, 2009 U.S. LEXIS 3132, 77 U.S.L.W. 3594 (2009).

Disbarment, with restitution as a condition for reinstatement, was warranted for attorney who took and spent for his own purposes a check for over \$241,000 issued to his client while knowing that the majority of the funds did not belong to him, in violation of rules of professional conduct prohibiting a lawyer from commission of a criminal act, engaging in dishonesty, engaging in misappropriation, failing to notify client of receipt of funds, failing to segregate funds, failing to deposit funds in separate account, and failing to inform client. In re Mitrano, 952 A.2d 901, 2008 D.C. App. LEXIS 297 (2008), writ of certiorari denied by 556 U.S. 1209, 129 S. Ct. 2064, 173 L. Ed. 2d 1134, 2009 U.S. LEXIS 3132, 77 U.S.L.W. 3594 (2009).

Attorney's disbarment from practice of law in Texas for misappropriation was within range of discipline that might have been imposed if misappropriation had occurred in District of Columbia, and thus, disbarment from practice of law in District of Columbia was appropriate reciprocal sanction, especially in light of attorney's failure to respond or to contest proceedings. In re Dobbyn, 943 A.2d 1165, 2008 D.C. App. LEXIS 92 (2008).

Disbarment was appropriate sanction for attorney's misconduct in recklessly misappropriating client funds by failing to pay workers' compensation carrier full amount of statutory lien on client's settlement with tortfeasor for four years, until lawsuit was filed against attorney disciplinary proceeding was initiated, in the absence of extraordinary circumstances. In re Cloud, 939 A.2d 653, 2007 D.C. App. LEXIS 841 (2007).

Conduct of attorney, in violating Rules of Professional Conduct regarding the failure to return unearned fees, false or misleading statements on services, fraud or dishonest conduct, and serious interference with the administration of justice, warranted disbarment, where attorney promised to refund clients' money if she was unable to obtain religious-worker visas, attorney evaded clients' requests for infor-

mation after she was unable to obtain the visas, clients resorted to government website to learn that their applications had been denied, attorney for several years failed to return clients' money as promised, clients' status as non-citizens made attorney's misconduct difficult to detect, attorney could not have obtained the promised visas without engaging in fraud, and attorney lied to her clients and Bar Counsel about the status off her efforts to make good on her refund obligations. In *re Kanu*, 5 A.3d 1, 2010 D.C. App. LEXIS 552 (2010).

Double jeopardy.

Attorney had no double jeopardy right to have disciplinary proceedings held in abeyance until completion of disciplinary proceedings in another jurisdiction, arising from same alleged misconduct; double jeopardy principles did not apply, as disciplinary proceedings were not criminal. In *re Asher*, 772 A.2d 1161, 2001 D.C. App. LEXIS 117 (2001).

Disciplinary proceedings, including those seeking disbarment, do not invoke the proscriptions against double jeopardy. In *re Asher*, 772 A.2d 1161, 2001 D.C. App. LEXIS 117 (2001).

Since disciplinary proceedings are not criminal, double jeopardy principles do not apply. In *re Asher*, 772 A.2d 1161, 2001 D.C. App. LEXIS 117 (2001).

Evidence.

Substantial evidence in record of attorney disciplinary proceedings supported findings of Board of Professional Responsibility that attorney misappropriated funds of ward of the state for whom she acted as guardian and failed to cooperate in subsequent disciplinary proceedings, in violation of rules of professional conduct prohibiting intentional misappropriation, making false statements to a tribunal, conduct involving dishonesty, fraud, deceit, or misrepresentation, failure to respond to bar counsel's inquiries, and conduct seriously interfering with administration of justice, as well as bar rule requiring response to allegations in bar counsel's complaint. In *re Wilson*, 953 A.2d 1052, 2008 D.C. App. LEXIS 356 (2008).

The New Jersey Disciplinary Review Board's (NJDRB) use of facts surrounding attorney's expunged offenses did not violate due process or result in an "infirmary of proof" establishing the disciplinary charges, in reciprocal disciplinary case; attorney had notice and a meaningful opportunity to be heard on the issue, attorney did not prevail on his arguments before the New Jersey courts, the NJDRB relied on the facts underlying the expunged charges, and not just on the charges, as the basis for imposing discipline, and attorney admitted his conduct during the New Jersey disciplinary proceedings. In *re Meaden*, 902 A.2d 802, 2006 D.C. App. LEXIS 412 (2006).

Hearing committee's consideration of hearsay documents subsequently excluded by Board on Professional Responsibility in attorney disciplinary proceedings did not implicate due process and did not provide legitimate ground for dismissal of complaint, where hearing committee eschewed reliance on all but one document referred to by attorney, Board did not rely on such documents, and all disciplinary counts not admitted to by attorney were supported by attorney's testimony and record and orders from courts in which misconduct occurred. In *re Thyden*, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

The mere fact that attorney suffered from depression at the time of the misconduct was insufficient to justify either a lesser sanction or an otherwise unwarranted fitness requirement since it had not been shown that attorney's depression either led her to commit the violations for which she was to be disciplined or likely caused her to be impaired at the present time. In *re Edwards*, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

Attorney waived her right to present mitigation evidence to the Board on Professional Responsibility by failing to offer it before the hearing committee in disciplinary action. In *re Edwards*, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

In order to qualify for a reduced sanction on account of a disability, such as depression, attorney must demonstrate: (1) by clear and convincing evidence that she had the disability at the time of her misconduct; (2) by a preponderance of the evidence that the disability substantially caused her to engage in that misconduct; and (3) by clear and convincing evidence that she has been substantially rehabilitated. In *re Edwards*, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

In misappropriation cases applying the recklessness standard, Bar Counsel must prove, by clear and convincing evidence, conduct sufficient to support an inference that attorney purposely dealt with and used the funds owed to as his own, or else that he consciously disregarded the risk that those funds would be used for unauthorized purposes. In *re Romansky*, 825 A.2d 311, 2003 D.C. App. LEXIS 305 (2003).

Board of Professional Responsibility was required to make findings that attorney acted knowingly or recklessly when he violated clients' fee agreements by adding hours to fee bills in order to premium bill, for purposes of finding that attorney violated ethics rule that precluded attorneys from engaging in acts of dishonesty, fraud, deceit or misrepresentation; Board had to determine whether attorney's explanation for his conduct was true, articulate its findings, and make credibility determinations to support its conclusions. In *re*

Romansky, 825 A.2d 311, 2003 D.C. App. LEXIS 305 (2003).

Evidence established attorney made false statements of material fact to third party and also engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of two professional conduct rules; when attorney received money judgment in client's personal injury case, attorney told provider of client's pain reduction device, or told his employee to tell provider, that the personal injury suit was on appeal, and attorney initially told provider that payment to provider had been "taken care of a long time ago." In re Mitchell, 822 A.2d 1106, 2003 D.C. App. LEXIS 275 (2003).

Facts in a civil trial suggesting dishonesty would not suffice as proof in an original attorney discipline matter, and neither will they support by themselves the imposition of increased discipline in a reciprocal proceeding. In re Maxwell, 798 A.2d 525, 2002 D.C. App. LEXIS 110 (2002).

Bar Counsel must prove disciplinary violations by clear and convincing evidence, which includes burden of proving underlying facts to support showing of an intentional or reckless misappropriation of client funds, which can have such a drastic effect on the penalty to be imposed in contrast to "negligent" misappropriation. In re Fair, 780 A.2d 1106, 2001 D.C. App. LEXIS 200 (2001).

Record was insufficient to find that conduct of attorney also acting as personal representative in overpaying herself by some \$593.45 of court-approved fees through a series of checks out of estate assets demonstrated a conscious indifference to the consequences, warranting disbarment, rather than mere mistakes, where attorney explained that she assumed that the payments made to herself had totaled \$6100 rather than \$6600, and had kept no record of the payments, but tried to keep the figures in her head. In re Fair, 780 A.2d 1106, 2001 D.C. App. LEXIS 200 (2001).

Failure of federal appellate court and that court's grievance committee to consider additional, newly discovered evidence of the conflict of interest of federal district court judge who had imposed \$20,000 discovery sanction on attorney in case involving same parties and issues as the case in which attorney's professional misconduct occurred did not deny attorney's due process rights, as basis for refusing to impose reciprocal discipline in District of Columbia; it was unlikely the additional evidence would have added substantially to evidence already introduced, and attorney had not requested stay of federal court disciplinary proceedings so he could develop additional evidence. In re Fair, 780 A.2d 1106, 2001 D.C. App. LEXIS 200 (2001).

Attorney's testimony to hearing committee, that he signed stipulation of his own accord, and attorney's reiteration, after a three-month opportunity to reconsider his testimony, that he signed the stipulation voluntarily, established that the stipulation was not the product of duress allegedly imposed by Bar Counsel. In re Kitchings, 779 A.2d 926, 2001 D.C. App. LEXIS 188 (2001).

Evidence supported finding that attorney violated disciplinary rule, requiring him to notify interested party of receipt of funds when he failed to notify client's health insurer, which covered client's medical expenses arising out of a motor vehicle accident in Maryland, of a settlement payment from other motorist's automobile insurer, even if health insurer had no claim to settlement funds under Maryland law; at time of attorney's failure to notify health insurer, Maryland law was unsettled on the issue, and attorney previously signed a form acknowledging that health insurer had a lien on any funds client received and agreeing to disburse such funds to health insurer. In re Shaw, 775 A.2d 1123, 2001 D.C. App. LEXIS 142 (2001).

The assessment of witness credibility in an attorney disciplinary case is for the factfinder. In re Asher, 772 A.2d 1161, 2001 D.C. App. LEXIS 117 (2001).

In disciplinary action against attorney after he is convicted of harassing federal witness and is disciplined by bar of another state, Board on Professional Responsibility's decision not to give any weight to affidavit of FBI agent regarding attorney's alleged threats against witness is abuse of discretion where affidavit shows that harassment conviction is not isolated incident of petulance but is part of mosaic of misconduct. In re Shillaire, 549 A.2d 336, 1988 D.C. App. LEXIS 194 (1988).

Affidavit containing hearsay is properly admissible in attorney disciplinary proceeding. In re Shillaire, 549 A.2d 336, 1988 D.C. App. LEXIS 194 (1988).

Hearing committee is not precluded, in an attorney disciplinary proceeding, from taking evidence in mitigation and aggravation, including evidence of prior discipline, after completion of the hearing on the merits of the case, even if it has not reached such a determination as to some or all of the charges proffered. In re Douglass, 859 A.2d 1069, 2004 D.C. App. LEXIS 520 (2004).

Expert testimony concerning conduct of reasonable attorney in personal injury cases was admissible in attorney disciplinary proceedings involving personal injury occurring on cruise ship in international waters, despite attorney's claim that expert was unqualified to testify with respect to statutes of limitations applicable under maritime law, where ad hoc committee handled admissibility issues properly, attor-

ney was afforded and took advantage of opportunity to cross-examine expert on both his qualifications and substance of his testimony, and majority of expert's testimony went to steps required to be taken by reasonable attorney in any personal injury action irrespective of venue. In re Douglass, 859 A.2d 1069, 2004 D.C. App. LEXIS 520 (2004).

Hearing committee did not abuse its discretion, in attorney disciplinary proceedings, in admitting evidence after completion of hearing on the merits with respect to prior disciplinary proceedings against attorney, despite its inability to reach preliminary nonbinding determination on all charges proffered by bar counsel, where hearing committee did not take up issue of sanction until after closing of hearing on merits and testimony at issue went directly to issue of sanction, and where disclosure of confidential discipline was appropriate in such setting. In re Douglass, 859 A.2d 1069, 2004 D.C. App. LEXIS 520 (2004).

Ex post facto.

Where law at least as far back as 1964 had proscribed same conduct as disciplinary rule which more recently came into effect, so that it could not be argued that conduct was innocent when done, its punishment by District of Columbia Court of Appeals under authority transferred by Congress from the United States district court did not offend constitutional prohibition against ex post facto laws. D.C. Code §§ 11-102, 11-2102, 11-2501(a), 11-2502; D.C. Code Bar Rules, rule 11, § 2; D.C. Code of Professional Responsibility, DR1-102(A)(5); U.S. Dist. Ct. Rules Dist. of Col. 1961, Civil Rules 94, 94(a, b, j); U.S. Dist. Ct. Rules Dist. of Col. Admission and Discipline of Attorneys Rule 4-3(c). In re Keiler, 380 A.2d 119, 1977 D.C. App. LEXIS 250 (1977).

Grounds for discipline.

— Commingling of funds, grounds for discipline.

Attorney failed to keep complete records of her escrow account, in violation of the Rules of Professional Responsibility; attorney deposited check drawn on her operating account into her escrow account and labeled the check as attorney fees but failed to indicate which client's fees that the money represented and why she was putting attorney fees into her escrow account, attorney failed to indicate on deposit slip for escrow account why she was withdrawing some money from the gross deposit and whose money she was taking, attorney paid tax claim for client out of her escrow account in an amount in excess of deposit she made into the account on client's behalf, and when client complained that attorney had not returned remainder of his money in escrow account attorney told Bar Counsel she was unable to locate her records.

In re Edwards, 990 A.2d 501, 2010 D.C. App. LEXIS 95 (2010), writ of certiorari denied by 131 S. Ct. 2942, 180 L. Ed. 2d 227, 2011 U.S. LEXIS 4041, 79 U.S.L.W. 3672 (U.S. 2011).

In reciprocal disciplinary action, six month suspension, with requirement that attorney prove fitness as a condition of reinstatement, was appropriate sanction for attorney who was suspended for 6 months in Florida because attorney, who was made a co-trustee of an estate, had failed to deposit certain insurance proceeds into a segregated escrow account and failed to ensure that his co-trustee properly and prudently used trust monies for the benefit of the children of the settlor, who later died. In re Miller, 896 A.2d 920, 2006 D.C. App. LEXIS 158 (2006).

Attorney's misappropriation of commingled funds was reckless rather than negligent, and, thus, warranted disbarment, despite claim of faulty record-keeping, and that account had sufficient funds when checks were presented; attorney allowed account to drop several hundred dollars below amount held for client's benefit for weeks at a time, attorney's frequent account inquiries indicated he knew that balance would not cover outstanding checks, sufficiency of funds at time of presentment was irrelevant, and no mitigating factors would support lesser sanction. In re Smith, 817 A.2d 196, 2003 D.C. App. LEXIS 87 (2003).

The rule against commingling requires that a lawyer maintain a separate escrow account for entrusted funds of a client or third party. In re Asher, 772 A.2d 1161, 2001 D.C. App. LEXIS 117 (2001).

Commingling of client funds from settlement of personal injury matter in personal bank account, failing to inform client of settlement, and retaining funds for significant period of time warrant public censure. Code of Prof. Resp., DR 1-102(A)(4), DR 9-103(A), DR 9-103(B)(4); D.C. Code 1981, § 11-2502. In re Ingram, 584 A.2d 602, 1991 D.C. App. LEXIS 7 (1991).

— Conduct prejudicial to administration of justice, grounds for discipline.

It is unprofessional conduct, meriting discipline by court, for counsel in closing argument either to vouch for his own witnesses or to categorize opposing witnesses as "liars"; that issue is for the jury. Olenin v. Curtin & Johnson, Inc., 424 F.2d 769, 1968 U.S. App. LEXIS 4724 (C.A.D.C. 1968), writ of certiorari denied by 394 U.S. 993, 89 S. Ct. 1485, 22 L. Ed. 2d 769, 1969 U.S. LEXIS 1956 (1969).

Attorney's violation of disciplinary rule requiring lawyer to surrender papers and property to which client was entitled as soon as reasonably practicable warranted 60-day suspension from practice of law, with suspension stayed after the first 30 days in favor of proba-

tion for one year provided that, within the first 30 days, attorney filed affidavit with Board and Bar Counsel certifying that he accepted conditions of probation; further, as condition of his probation attorney had to take six hours of continuing legal education courses in (1) legal ethics and (2) law office management as approved by Bar Counsel within first six months of probation, and attorney had to pay restitution to client. In re Thai, 987 A.2d 428, 2009 D.C. App. LEXIS 646 (2009).

Attorney's acts of misconduct in combination justified a lengthy five-year period of suspension as identical reciprocal discipline, although considered individually, and in isolation they might be deemed less serious; attorney was convicted on separate occasions of public drunkenness and driving under the influence, he had a long history of filing civil actions against numerous and various defendants on grounds that were, at best, of questionable merit, and he was convicted of assaulting an employee of the city attorney's office. In re Ditton, 980 A.2d 1170, 2009 D.C. App. LEXIS 458 (2009).

Attorney's initial failure to respond to request by Bar Counsel for information related to trust account overdrafts, and then refusal to comply with subpoenas to appear before Bar Counsel and to produce documents, violated Bar Rule requiring attorney to comply with court order and Rules of Professional Conduct requiring attorney to respond to lawful request for information and engaging in conduct that seriously interfered with administration of justice. In re Cooper, 936 A.2d 832, 2007 D.C. App. LEXIS 672 (2007).

Attorney's repeated failures to respond to letters from Bar Counsel and orders of Board on Professional Responsibility, received by her in connection with three separate disciplinary proceedings, violated rules of professional conduct requiring reasonable responses to lawful demands for information from disciplinary authorities and prohibiting conduct seriously interfering with administration of justice, as well as bar rule requiring compliance with orders of court or Board on Professional Responsibility, where attorney's conduct hindered expeditious resolution of allegations against her. In re Carter, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

An attorney's failure to respond to Bar Counsel's inquiries in an investigation of a disciplinary complaint violates professional conduct rule barring attorneys from engaging in conduct that seriously interferes with administration of justice. In re Owusu, 886 A.2d 536, 2005 D.C. App. LEXIS 555 (2005).

Attorney's combined failure to respond to Bar Counsel's inquiry into his representation of client and failure to inform the Bar of his current address did not violate professional

conduct rule barring attorneys from engaging in conduct that seriously interferes with administration of justice; attorney had not been served personally with complaint and/or orders of Board on Professional Responsibility, and while such lack of actual notice may have been caused by attorney's failure to update his registration statements with Bar for over three years following attorney's neglect of client's immigration case, the reasons for attorney's failure to update his address were unknown, so that attorney's knowledge of Bar Counsel's inquiry could not be imputed and it could not be said that attorney deliberately evaded Bar Counsel's inquiry. In re Owusu, 886 A.2d 536, 2005 D.C. App. LEXIS 555 (2005).

Six month suspension from the practice if law was warranted, in attorney disciplinary case, where attorney engaged in the unauthorized practice of law and filed notices of appearance while she was subject to an interim order of suspension from a prior disciplinary case. In re Soininen, 853 A.2d 712, 2004 D.C. App. LEXIS 388 (2004).

A failure to respond to Bar Counsel's investigation, combined with a failure to comply with a Board on Professional Responsibility order, qualifies as a violation of professional conduct rule prohibiting an attorney from interfering with the administration of justice. In re Spitzer, 845 A.2d 1137, 2004 D.C. App. LEXIS 76 (2004).

Attorney's failure to respond to requests for information from bar counsel and board on professional responsibility violated rules of professional conduct prohibiting failure to respond to lawful demand for information from disciplinary authority and serious interference with administration of justice, as well as bar rule requiring compliance with orders of board on professional responsibility. In re Beller, 841 A.2d 768, 2004 D.C. App. LEXIS 39 (2004).

Attorney's failure to meet federal appellate court's court-ordered deadlines, disregard of federal rules of appellate procedure, and failure to cooperate with opposing counsel, constituted conduct that seriously interfered with administration of justice. In re Balsamo, 780 A.2d 255, 2001 D.C. App. LEXIS 190 (2001).

Attorney who failed to pay \$3,652.74 judgment rendered against him for accepting attorney fees from an estate, without filing with the probate court a petition for such fees, as was then required by statute, interfered with the administration of justice, in violation of professional responsibility rules; the attorney violated a court order, and the personal representative of the estate had to make repeated demands for payment, had to file a complaint with the Clients' Security Trust Fund, and, most important, had been unable to close the estate and distribute its assets for several years. In re Travers, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

Attorney's failure to pay \$3,652.74 judgment rendered against him for accepting attorney fees from an estate, without filing with the probate court a petition for such fees, as was then required by statute, did not interfere with the administration of justice, in violation of professional responsibility rules, before the estate could have been closed and before the Court of Appeals had affirmed the judgment against attorney. *In re Travers*, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

Three criteria are used to ascertain whether attorney's conduct is prejudicial to administration of justice under disciplinary rule: (1) there must be an improper action or a failure to take a proper action; (2) conduct itself must bear directly on judicial process with respect to identifiable case or tribunal; and (3) conduct must at least potentially impact upon process to a serious and adverse degree. Code of Prof.Resp., DR 1-102(A)(5) (1990). *In re Mason*, 736 A.2d 1019, 1999 D.C. App. LEXIS 205 (1999).

Proceeding implicated by attorney's conduct that forms basis of disciplinary charge of conduct prejudicial to administration of justice can be either judicial or quasi-judicial in nature. Code of Prof.Resp., DR 1-102(A)(5) (1990). *In re Mason*, 736 A.2d 1019, 1999 D.C. App. LEXIS 205 (1999).

Disciplinary rule prohibiting lawyer from engaging in conduct prejudicial to administration of justice is a general rule that is purposely broad to encompass derelictions of attorney conduct considered reprehensible to the practice of law. Code of Prof.Resp., DR 1-102(A)(5) (1990). *In re Mason*, 736 A.2d 1019, 1999 D.C. App. LEXIS 205 (1999).

"conduct prejudicial to the administration of justice" does not require interference specifically with the judicial decision-making process; attorney's improper conduct can be prejudicial to the administration of justice not only by bearing directly on the judicial decision-making function, but also by bearing directly on the judicial process in general. Code of Prof.Resp., DR 1-102(A)(5). *In re Hopkins*, 677 A.2d 55, 1996 D.C. App. LEXIS 111 (1996).

In order to be prejudicial to the administration of justice, attorney's conduct must be improper in that that attorney took improper action or failed to take action when he or she should have acted, conduct must bear directly upon the judicial process with respect to an identifiable case or tribunal, which will very likely be the case where attorney is acting either as attorney or in a capacity ordinarily associated with the practice of law, and attorney's conduct must taint the judicial process in more than a de minimis way and least potentially impact upon the process to a serious and adverse degree. Code of Prof.Resp., DR 1-102(A)(5). *In re Hopkins*, 677 A.2d 55, 1996 D.C. App. LEXIS 111 (1996).

Conduct may be improper and prejudicial to the administration of justice because it violates a specific statute, court rule or procedure, or other disciplinary rule, or simply because, considering all the circumstances in a given situation, attorney should know that he or she would reasonably be expected to act in such a way as to avert any serious interference with the administration of justice. Code of Prof.Resp., DR 1-102(A)(5). *In re Hopkins*, 677 A.2d 55, 1996 D.C. App. LEXIS 111 (1996).

Although office of Bar Counsel is not properly characterized as a tribunal, it is an integral part of the disciplinary system established by the Court of Appeals, and investigation by Bar Counsel is thus part of the judicial process for purposes of rule prohibiting conduct prejudicial to the administration of justice. Code of Prof.Resp., DR 1-102(A)(5); Bar Rule XI, § 6. *In re Hopkins*, 677 A.2d 55, 1996 D.C. App. LEXIS 111 (1996).

Attorney for personal representative of estate engaged in "conduct prejudicial to the administration of justice" where she agreed with attorney representing beneficiary that proceeds would be put in joint account requiring both her signature and that of personal representative, did not do so, became aware of withdrawals by client and, after meeting with Register of Wills about the matter, failed to take any further action to protect the estate assets from her client's looting, all the while knowing that beneficiary had waived statutory bond requirement in reliance on the promise to place the funds under joint control. Code of Prof.Resp., DR 1-102(A)(5). *In re Hopkins*, 677 A.2d 55, 1996 D.C. App. LEXIS 111 (1996).

While personal representative has various powers with regard to administration of the estate, personal representative is judicially appointed and is subject to court's authority, and estate distribution is a judicial function within prohibition on conduct prejudicial to the administration of justice. Code of Prof.Resp., DR 1-102(A)(5). *In re Hopkins*, 677 A.2d 55, 1996 D.C. App. LEXIS 111 (1996).

Knowing failure to obey specific court procedure is not a required element of conduct prejudicial to the administration of justice. Code of Prof.Resp., DR 1-102(A)(5). *In re Hopkins*, 677 A.2d 55, 1996 D.C. App. LEXIS 111 (1996).

"conduct prejudicial to the administration of justice" does not require an interference with the judicial decision-making process that causes the court to malfunction or make an incorrect decision, disciplinary rule prohibits conduct which taints the decision making process, even if such conduct fosters a correct decision. Code of Prof.Resp., DR 1-102(A)(5). *In re Hopkins*, 677 A.2d 55, 1996 D.C. App. LEXIS 111 (1996).

Acceptance of payment from defendant for services performed in the very same case in

which attorney has been appointed to represent defendant free of charge is presumptively prejudicial to administration of Criminal Justice Act system, if for no other reason than because of belief it likely will instill in defendant that quality of his representation may yet depend upon gathering together funds to compensate attorney whom he has not selected. Code of Prof.Resp., DR 1-102(A)(5); D.C. Code 1981, § 11-2606(a). In re L.R., 640 A.2d 697, 1994 D.C. App. LEXIS 49 (1994).

Repeated refusal to respond in any fashion to bar counsel's inquiries is prejudicial to administration of justice. Code of Prof.Resp., DR 1-102(A)(5). In re Lenoir, 585 A.2d 771, 1991 D.C. App. LEXIS 14 (1991).

Failure to respond to any of bar counsel's legitimate requests for information is prejudicial to administration of justice. Code of Prof.Resp., DR 1-102(A)(5). In re Lenoir, 585 A.2d 771, 1991 D.C. App. LEXIS 14 (1991).

In absence of conduct affecting decision-making process of any tribunal, willful failure to file tax returns does not constitute conduct prejudicial to the administration of justice. Code of Prof.Resp., DR 1-102(A)(5). In re Shorter, 570 A.2d 760, 1990 D.C. App. LEXIS 28 (1990).

Attempt by attorney to sell evidence by plaintiff's counsel in medical malpractice action is conduct that is prejudicial to administration of justice prohibited by disciplinary rule and single instance of willful conduct justifies six-month suspension. In re Sablowsky, 529 A.2d 289, 1987 D.C. App. LEXIS 396 (1987).

Falsifying signature of client on divorce complaint constitutes conduct prejudicial to administration of justice, even if complaint presents facts and arguments identical to those in properly signed prior complaint dismissed for not being issued within six months after filing date. Domestic Relations Rule 41(f); Code of Prof.Resp., DR1-102(A)(5). In re Reback, 513 A.2d 226, 1986 D.C. App. LEXIS 384 (1986).

Attorney's asking questions of his client during direct examination relative to particular area which the trial judge has ruled irrelevant, and again straying into the forbidden area during closing argument, can be adequately addressed through judicial contempt proceedings and does not rise to level of being prejudicial to administration of justice. Code of Prof.Resp., DR 1-102(A)(5). In re Thompson, 478 A.2d 1061, 1984 D.C. App. LEXIS 443 (1984).

In context of need for discipline of attorney, harm results to administration of justice when conduct of judicial or quasi-judicial proceeding such as arbitration proceeding is such as to render the proceeding a bogus one. D.C. Code Bar Rules, rule 10; D.C. Code Code of Profes-

sional Responsibility, DR1-102(A)(5). In re Keiler, 380 A.2d 119, 1977 D.C. App. LEXIS 250 (1977).

— Conflict of interest, grounds for discipline.

Thirty-day suspension, stayed in favor of probation, as opposed to informal admonition, was appropriate sanction for attorney who incompetently represented interests of client, who was aged family friend, and engaged in a conflict of interest without full disclosure when he drafted her will; occurrence of attorney's ethical violations in a personal context outside his usual practice as assistant general counsel at the Department of Consumer and Regulatory Affairs was a mitigating, rather than an aggravating, factor, and incompetent representation and conflicts of interest were significant breaches. In re Long, 902 A.2d 1168, 2006 D.C. App. LEXIS 416 (2006).

Attorney, who owned title company and practiced in probate and real estate law, violated rule of professional conduct regarding conflict of interest by not personally disclosing potential conflict of interest and obtaining a waiver of the conflict, when he undertook to represent borrower in probate proceeding after it was discovered that borrower in real estate transaction that his title company was contacted to close did not have title to property and that property instead belonged to unprobated estate of borrower's deceased mother-in-law; though attorney claimed he thought his associate made the necessary disclosure, attorney had an independent duty to fully and adequately disclose the conflict and to make sure that borrower knowingly waived the conflict, and attorney acknowledged he did not personally disclose to borrower that he owned title company or obtain her informed consent to the potentially conflicted representation. In re Long, 902 A.2d 1168, 2006 D.C. App. LEXIS 416 (2006).

Attorney's continued representation of client, after client had filed motion to withdraw his guilty plea in prosecution in Maryland federal court, was materially limited by attorney's own interests, so that attorney's failure to withdraw from the representation violated Maryland professional conduct rule on conflicts of interest, which was applicable in District of Columbia disciplinary proceeding; client's motion alleged, as grounds for withdrawal of client's guilty plea, that attorney had coerced client into pleading guilty and that attorney had provided ineffective assistance of counsel with respect to the plea, and attorney could not argue motion to withdraw plea without possibly admitting serious ethical violations and subjecting himself to possible liability for malpractice. In re

Ponds, 888 A.2d 234, 2005 D.C. App. LEXIS 642 (2005).

— **Contempt of court, grounds for discipline.**

Attorney's out-of-state disbarment for representing himself in fee award dispute in his divorce case, in willful and blatant violation of court order barring him from representing clients, did not rise to level of injustice warranting departure from reciprocal discipline imposed in cases in which attorney does not participate in proceedings before Board on Professional Responsibility, where out-of-state disbarment was based on finding that attorney was in contempt for failure to obey court order, and not directly on his self-representation, and violation of court order would violate District of Columbia rules of professional responsibility. In re Kersey, 897 A.2d 198, 2006 D.C. App. LEXIS 196 (2006), writ of certiorari denied by 549 U.S. 1217, 127 S. Ct. 1358, 167 L. Ed. 2d 94, 2007 U.S. LEXIS 2234, 75 U.S.L.W. 3436 (2007).

— **Criminal conduct, grounds for discipline.**

In a proceeding for the disbarment of an attorney for alleged false and scandalous statements made by him concerning a fellow member of the bar and contained in a paper filed in a cause, it is no defense that such statements did not constitute a technical or indictable crime, nor does the question of privilege arise, as the only question to be determined is as to the fitness of such attorney to remain a member of the bar. In re Adriaans, 17 App.D.C. 39, 1900 U.S. App. LEXIS 5327 (1900).

The federal circuit court will strike an attorney from the roll for malpractice, although the offense is not indictable. *U.S. v. Porter*, 27 F.Cas. 595, 1795 U.S. App. LEXIS 55 (1812).

Suspension from practice of law for six months was appropriate sanction following attorney's guilty plea to misdemeanor insurance fraud; facts did not indicate that crime was one of moral turpitude, and therefore, disbarment was not required. In re Wiss, 948 A.2d 1179, 2008 D.C. App. LEXIS 241 (2008).

Six month suspension was warranted for conduct of attorney who pled guilty to one misdemeanor count of unlawful receipt of compensation with intent to defeat purposes of United States Department of Housing and Urban Development (HUD) in violation of federal statute, even though the conduct did not involve moral turpitude, as it violated professional conduct rules governing fairness to opposing party and generally defining misconduct. In re Abrahamson, 852 A.2d 949, 2004 D.C. App. LEXIS 334 (2004).

Attorney's conduct in committing misdemeanor offense of drawing a check of less than \$200 on insufficient funds, with intent to de-

fraud, and failing to report conviction and public reprimand by bar in other jurisdiction to Bar Counsel, warranted 30-day suspension, in light of fact that offense did not constitute crime involving moral turpitude. In re Powell, 836 A.2d 579, 2003 D.C. App. LEXIS 694 (2003).

A lawyer's actions do not have to reach the level of criminal conduct before disciplinary action may be taken. In re Uchendu, 812 A.2d 933, 2002 D.C. App. LEXIS 745 (2002).

A lawyer's actions do not have to reach the level of criminal conduct before disciplinary action may be taken. In re Minninberg, 485 A.2d 149, 1984 D.C. App. LEXIS 555 (1984).

— **Deception of court or obstruction of administration of justice, grounds for discipline.**

Slight verbal corrections by attorney of draft of article subsequently published in trade journal and thereafter submitted by attorney to Patent Office in patent proceedings was not sufficient basis for disbarment of attorney from practice before Patent Office. *Dorsey v. Kingsland*, 173 F.2d 405, 1949 U.S. App. LEXIS 4277 (C.A.D.C. 1949).

An attorney in submitting an article in trade journal to Patent Office in patent proceedings was not guilty of any dereliction of his duty in failing to make known the exact contribution of various people in preparation of article, and test should have been truth or falsity of facts set out in the article. *Dorsey v. Kingsland*, 173 F.2d 405, 1949 U.S. App. LEXIS 4277 (C.A.D.C. 1949).

Alleged conduct of attorney in Patent Office proceedings, in misleading or attempting to mislead Patent Office and Court of Appeals as to inferences or conclusions to be drawn from article in trade journal which attorney had submitted to Patent Office, was insufficient basis for disbarment of attorney from practice before Patent Office. *Dorsey v. Kingsland*, 173 F.2d 405, 1949 U.S. App. LEXIS 4277 (C.A.D.C. 1949).

The fact that company involved in litigation made payment to author of article in trade journal submitted to Patent Office by attorney in course of litigation did not constitute sufficient ground for disbarment of attorney from practice before Patent Office in absence of showing that attorney was connected with payment to author of article. *Dorsey v. Kingsland*, 173 F.2d 405, 1949 U.S. App. LEXIS 4277 (C.A.D.C. 1949).

Conduct of attorney in repeatedly charging justice with corruptly obstructing justice by authentication of a false bill of exceptions and by hand-picking a jury, in inducing another to make similar charges and in similarly charging former United States district attorney with presenting a false bill of exceptions, held to warrant disbarment. *Duke v. Committee on*

Grievances of the Supreme Court of the District of Columbia, 82 F.2d 890, 1936 U.S. App. LEXIS 3143 (1936).

Attorney making false statements to court for purposes of deception, and misappropriating clients' money, held properly disbarred. *Thomas v. Ogilby*, 44 F.2d 890, 1930 U.S. App. LEXIS 3448 (1930).

Attorney knowingly making false affidavit in action to recover fees held properly disbarred for conduct prejudicial to administration of justice. Code, § 219 (D.C. Code 1929, T. 18, § 53). *Curtis v. Whiteford*, 41 F.2d 302, 1930 U.S. App. LEXIS 2775 (1930).

In determining whether patent attorneys should be disbarred because of their undisclosed connection with article in trade journal used to influence action of Patent Office on pending application, fact that labor leader who signed article considered it his article and would be regarded as author, and that he had had right to revise article, was immaterial. 35 U.S.C. §§ 31, 32. *Hatch v. Ooms*, 69 F.Supp. 788, 1947 U.S. Dist. LEXIS 2926 (D.D.C.1947).

In determining whether patent attorneys should be disbarred because of their undisclosed connection with preparation of labor leader's article in trade journal used in influencing decision of Patent Office on pending application, fact that statements in article were true was immaterial, since weight of article depended as much upon its origin as its content. 35 U.S.C. §§ 31, 32. *Hatch v. Ooms*, 69 F.Supp. 788, 1947 U.S. Dist. LEXIS 2926 (D.D.C.1947).

Where disbarment proceedings against patent attorneys were based upon their undisclosed connection with preparation of article in trade journal used to influence Patent Office on application for patent, fact that article mentioned manufacturers other than assignee of the pending application who were using new devices did not establish that Patent Office was not influenced, in view of fact that machines of other manufacturers came within broad claims of pending application. 35 U.S.C. §§ 31, 32. *Hatch v. Ooms*, 69 F.Supp. 788, 1947 U.S. Dist. LEXIS 2926 (D.D.C.1947).

The fact that patent attorneys charged with misconduct in participation in preparation and presentation to Patent Office of article in trade journal relating to pending application did not all participate in all phases of the preparation and presentation, and that they were not charged as conspirators, did not preclude disbarment of all three attorneys who had all had some connection with the project, and had failed to make any disclosure to Patent Office. 35 U.S.C. §§ 31, 32. *Hatch v. Ooms*, 69 F.Supp. 788, 1947 U.S. Dist. LEXIS 2926 (D.D.C.1947).

Where an attorney advises a witness for the prosecution in a murder case to conceal himself so that his testimony could not be procured,

such conduct is sufficient to disbar him. *Ex parte Burr*, 4 F.Cas. 791, 1823 U.S. App. LEXIS 255 (1823).

Attorney knowingly failed to respond reasonably to a lawful demand for information from a disciplinary authority in violation of the Rules of Professional Conduct by delaying her responses to Bar Counsel's letters of inquiry mailed after client had complained that attorney did not return his money held in attorney's escrow account; though attorney's initial delay in responding was justified in light of health problems and the relocation of her office, attorney first informed Bar Counsel that she had sought help in reviewing her files three months after receiving the initial letters, attorney did not provide a response when Bar Counsel made a motion to Board of Professional Responsibility for an order to compel a response, attorney did not provide a response within ten days after Board granted motion, and attorney only began preparing her response after Bar Counsel filed a specification of charges. *In re Edwards*, 990 A.2d 501, 2010 D.C. App. LEXIS 95 (2010), writ of certiorari denied by 131 S. Ct. 2942, 180 L. Ed. 2d 227, 2011 U.S. LEXIS 4041, 79 U.S.L.W. 3672 (U.S. 2011).

Lying about service of counterclaim on pro se litigant warranted reciprocal discipline of 30-day suspension as discipline substantially different from original admonition, although attorney had no prior disciplinary history; conduct involved serious acts of dishonesty for which 30-day suspension was appropriate, and court had not previously imposed lesser sanction than suspension for comparable conduct. *In re Amberly*, 974 A.2d 270, 2009 D.C. App. LEXIS 234 (2009).

Suspension for 10 days was appropriate reciprocal discipline for attorney's misconduct in violating of Florida Rules of Professional Conduct regarding concealing evidence, failure to report to demand for information from disciplinary authority, dishonesty, and failure to respond in writing to a bar inquiry, where attorney was suspended from the practice of law for 10 days in Florida. *In re Granoski*, 911 A.2d 1225, 2006 D.C. App. LEXIS 634 (2006).

Evidence was sufficient to establish that attorney, who owned title company and practiced in probate and real estate law, violated rule of professional conduct barring conduct that seriously interfered with the administration of justice, in connection with his representation of borrower in probate proceeding after it was discovered that borrower in real estate transaction title company was contacted to close did not have title to property; attorney testified probate estate was opened to have the "appropriate people appointed" to sign for the loan, there was evidence that attorney took repeated shortcuts in probate proceeding to transfer title to borrower, attorney did not attend probate

hearing regarding forged documents obtained by borrower to procure title, attorney failed to either withdraw from representation or ensure borrower complied with court order to provide an accounting, and attorney accepted legal fees from estate without prior court approval. In re Evans, 902 A.2d 56, 2006 D.C. App. LEXIS 201 (2006).

Evidence was sufficient to establish that attorney, who owned title company and practiced in real estate and probate law, violated rule of professional conduct requiring competent representation, when he undertook to represent borrower and initiated probate proceeding after it was discovered that borrower in transaction title company was contacted to close did not have title to property and that property instead belonged to unprobated estate of borrower's deceased mother-in-law; attorney filed facially defective renunciation forms for borrower's son and her deceased husband's brother, attorney provided inconsistent testimony regarding his decision to use forms, deputy registrar of titles denied advising attorney's legal assistant to use forms, and attorney failed to properly advise borrower regarding the factual and legal complications involved in transferring title to her. In re Evans, 902 A.2d 56, 2006 D.C. App. LEXIS 201 (2006).

Thirty-day suspension was appropriate sanction for attorney who brought frivolous lawsuit and engaged in conduct that seriously interfered with the administration of justice; attorney filed an unfounded defamation suit against individual who had made a complaint to Bar Counsel, and by doing so, attorney indirectly interfered with Bar Counsel's ongoing investigation of the ethical complaint, and this was not attorney's first ethical infraction. In re Spikes, 881 A.2d 1118, 2005 D.C. App. LEXIS 465 (2005).

Courts use three-pronged analysis to determine whether an attorney has engaged in conduct which interferes with the administration of justice: (1) conduct must be improper, and it may be improper because it violates a specific statute, court rule or procedure; (2) the conduct itself must bear directly upon the judicial process (i.e., the administration of justice) with respect to an identifiable case or tribunal; and (3) the attorney's conduct must taint the judicial process in more than a de minimis way, that is, at least potentially impact upon the process to a serious and adverse degree. In re Spikes, 881 A.2d 1118, 2005 D.C. App. LEXIS 465 (2005).

Attorney's persistence in maintaining frivolous lawsuit, including an appeal, seriously interfered with the administration of justice and violated rule prohibiting attorneys from engaging in conduct that seriously interfered with the administration of justice. In re Spikes,

881 A.2d 1118, 2005 D.C. App. LEXIS 465 (2005).

In the face of consistent and clear case law holding that an absolute privilege attached to complaints made to Bar Counsel, reasonable lawyer in attorney's position would have easily concluded that attorney's defamation lawsuit against individual who made complaint to the Office of Bar Counsel concerning attorney's behavior was meritless, and by bringing meritless defamation suit, attorney violated rule providing that lawyer shall not bring a proceeding unless there is a basis for doing so that is not frivolous. In re Spikes, 881 A.2d 1118, 2005 D.C. App. LEXIS 465 (2005).

Attorney's failure to respond to Bar Counsel's letters during investigation of disciplinary complaint filed against him, regardless of whether letters were mailed to attorney's address, served by messenger, sent by certified mail, or transmitted by fax, violated professional rules governing failure to respond to disciplinary authority, serious interference with administration of justice, and failure to comply with order of Board. In re Kaufman, 878 A.2d 1187, 2005 D.C. App. LEXIS 330 (2005).

Evidence that actions undertaken by attorney in bankruptcy proceedings were substantively frivolous and interposed for purposes of delay was sufficient to support finding, in attorney disciplinary proceeding, that attorney improperly burdened the administration of justice; undisputed evidence established that Bankruptcy Court twice sanctioned attorney personally as result of his filings in that court, attorney acknowledged that his original clients lacked standing to file adversary action in bankruptcy proceedings, and attorney continued adverse action filed in another party's name even after such other party categorically told him to stop. In re Thyden, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Attorney's conduct in making late submission, to Superior Court, of Criminal Justice Act (CJA) voucher form for compensation for representing complaining witness in attempted-murder case, and in claiming fees substantially above statutory limit without providing supporting information to court, did not seriously interfere with administration of justice, in violation of professional conduct rules. In re Hallmark, 831 A.2d 366, 2003 D.C. App. LEXIS 541 (2003).

In order to violate the rule prohibiting attorney from seriously interfering with administration of justice, an attorney's conduct must be improper; it must bear directly upon the judicial process with respect to an identifiable case or tribunal; and the attorney's conduct must taint the judicial process in more than a de minimis way. In re Uchendu, 812 A.2d 933, 2002 D.C. App. LEXIS 745 (2002).

Attorney's submission to Probate Division of documents containing false signatures and defective notarizations violated rule prohibiting attorney from seriously interfering with administration of justice. In *re Uchendu*, 812 A.2d 933, 2002 D.C. App. LEXIS 745 (2002).

Attorney's making false statements to cover up the fact that she had attempted to eavesdrop on testimony in violation of judge's sequestration order warranted 30-day suspension from the practice of law. In *re Owens*, 806 A.2d 1230, 2002 D.C. App. LEXIS 535 (2002).

Sufficient evidence supported board of professional responsibility's determination that lawyer made false statements to court and opposing counsel regarding whether he represented client as of date of hearing at which client allegedly committed perjury; although client did not tender a retainer until after hearing, client's testimony indicated that lawyer advised her of the steps necessary to obtain a protective order and appeared with her in court for the hearing. In *re Corizzi*, 803 A.2d 438, 2002 D.C. App. LEXIS 388 (2002).

Attorney's conduct in making misrepresentations to the federal appellate court regarding his reasons for failing to meet that court's deadlines was conduct of a dishonest character, in violation of disciplinary rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation. In *re Balsamo*, 780 A.2d 255, 2001 D.C. App. LEXIS 190 (2001).

To establish a violation of the professional responsibility rule prohibiting interference with the administration of justice, Bar Counsel must make a three-part showing: first, the conduct must be improper, second, the conduct itself must bear directly upon the judicial process with respect to an identifiable case or tribunal, and third, the attorney's conduct must taint the judicial process in more than a de minimis way, that is, it must at least potentially impact upon the process to a serious and adverse degree. In *re Travers*, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

Attorney's conduct can be considered improper because it violates specific statute, court rule or procedure, or other disciplinary rule, but it may be improper simply because, considering all circumstances in given situation, attorney should know that he or she would reasonably be expected to act in such a way as to avert any serious interference with administration of justice. Code of Prof.Resp., DR 1-102(A)(5) (1990). In *re Mason*, 736 A.2d 1019, 1999 D.C. App. LEXIS 205 (1999).

Conduct as defendant in traffic court hearing which results in misdemeanor conviction for obstruction of justice is conduct involving dishonesty, fraud, deceit and/or misrepresentation, and conduct prejudicial to administration of justice, which warrants six-month suspension. Code of Prof.Resp., DR 1-102(A)(4, 5). In

re Wilkins, 649 A.2d 557, 1994 D.C. App. LEXIS 203 (1994).

Filing series of frivolous appeals, repeatedly violating court orders, consistently failing to follow appropriate procedural rules and otherwise interfering with work of Court of Appeals for Federal Circuit constitutes violation of disciplinary rule prohibiting attorneys from engaging in conduct prejudicial to administration of justice and rule prohibiting knowing advancement of unwarranted claims. Code of Prof.Resp., DR 1-102(A)(5), DR 7-102(A)(2). In *re Solerwitz*, 575 A.2d 287, 1990 D.C. App. LEXIS 126 (1990).

Signing client's name to complaint constitutes presentation of false facts to court, even if client signed identical, prior complaint which was dismissed for failure to become at issue within six months of filing date. Domestic Relations Rule 41(f); Code of Prof.Resp., DR 7-102(A)(5). In *re Reback*, 513 A.2d 226, 1986 D.C. App. LEXIS 384 (1986).

— Failure to notify, grounds for discipline.

A 30-day suspension stayed in favor of one-year of unsupervised probation was warranted for attorney who failed to inform client of dismissal of complaint and failed to represent the interests of her client, who was an incapacitated ward. In *re Gaines*, 5 A.3d 1026, 2010 D.C. App. LEXIS 588 (2010).

Attorney's conduct in failing to notify client of pending immigration hearing, failing to attend the hearing resulting in entry of an in absentia deportation order, and failing to take any remedial actions, which violated rules of professional conduct regarding diligent representation and keeping client informed, warranted public censure. In *re Geno*, 997 A.2d 692, 2010 D.C. App. LEXIS 346 (2010).

Client's father who provided a flat fee to attorney to represent his son in a homicide case did not provide "informed consent" to attorney's treating the fee as the attorney's property, as required by the Rules of Professional Conduct, though client's father understood the fee was the attorney's property, where there was no discussion between the attorney and client's father regarding how the flat fee was to be treated. In *re Mance*, 980 A.2d 1196, 2009 D.C. App. LEXIS 473 (2009).

Public censure was appropriate sanction for attorney's violation of rules of professional conduct, including rules requiring attorneys to provide competent, zealous, and diligent representation, and to keep client reasonably informed based on his representation of client in personal injury matter that was approaching deadline to file suit under statute of limitations, notwithstanding his lack of disciplinary history and his career as an officer in the Marine Corps. In *re Avery*, 926 A.2d 719, 2007 D.C. App. LEXIS 331 (2007).

Evidence that attorney failed to inform client of letter received from opposing party in adversary action in bankruptcy court, requesting settlement discussions with client, was sufficient to support finding, in attorney disciplinary proceeding, that attorney failed promptly to inform client of settlement offer, despite attorney's claimed belief that letter was not good faith offer of settlement, but rather attempt by opposing party to drive wedge between himself and his client. In re Thyden, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Attorney's failure to pay provider of client's pain reduction device from proceeds of money judgment in personal injury case was intentional rather than inadvertent, for purposes of professional conduct rule requiring an attorney to promptly notify a third party of the attorney's receipt of funds in which the third party has an interest; client was attorney's wife, and attorney was aware of client's indebtedness to provider of device. In re Mitchell, 822 A.2d 1106, 2003 D.C. App. LEXIS 275 (2003).

Ninety-day suspension, rather than 30-day suspension, was warranted as disciplinary sanction for attorney's conduct in failing to notify provider of pain reduction device to client of attorney's receipt of money judgment in personal injury case and attorney's misrepresentations to provider; such conduct occurred over period of almost four years, and attorney failed to pay provider until more than two years after he was notified of Bar Counsel's action against him. In re Mitchell, 822 A.2d 1106, 2003 D.C. App. LEXIS 275 (2003).

— Falsification or alteration of records or papers, grounds for discipline.

Evidence was sufficient to support finding of Board of Professional Responsibility that attorney committed perjury by giving knowingly false testimony to Hearing Committee, in lawyer disciplinary proceeding, concerning whether she had in fact made a jail visit to client as indicated on falsified timekeeping voucher that she submitted to court for compensation for services in extradition case; evidence showed that attorney did not meet with client at the jail on the date that she indicated on her voucher, yet attorney maintained in her initial testimony that she had. In re Cleaver-Bascombe, 886 A.2d 1191, 2010 D.C. App. LEXIS 4 (2010).

Suspension for 18 months, with requirement that after resumption of practice of law the attorney attend a course on professional responsibility, was warranted, as non-identical reciprocal discipline in District of Columbia following attorney's disbarment in Maryland, with respect to attorney's misconduct, as an associate attorney, in falsely representing to other attorneys at law firm that he had filed an appeal in a client's case and in creating falsified

filing stamps on papers to make it appear that those papers had been filed in court, after attorney had failed to convey to client the law firm's offer to represent the client in the appeal for a reduced fee, which offer the law firm intended as a response to client's indication that he did not want to appeal because he did not want to incur additional fees and expenses. In re Guberman, 978 A.2d 200, 2009 D.C. App. LEXIS 347 (2009).

Attorney's forgery of signature on document purporting to be agreement between law firm for which attorney was a partner and state of Arkansas to enter into contingency fee agreement with respect to underlying natural resource damage litigation constituted violation of rule of professional conduct prohibiting an attorney from engaging in criminal act that reflects adversely on attorney's honesty, trustworthiness, or fitness as an attorney in other respects. In re Slaughter, 929 A.2d 433, 2007 D.C. App. LEXIS 469 (2007).

In reciprocal attorney disciplinary action, public censure was appropriate sanction for attorney who was reprimanded in New Jersey for filing false statements with the Rent Control Office in order to obtain illegal rents; there was no miscarriage of justice in the New Jersey proceedings as the record revealed that attorney was not denied due process and attorney was represented by counsel when he stipulated to the misconduct and discipline. In re Scinto, 896 A.2d 230, 2006 D.C. App. LEXIS 153 (2006).

Attorney violated rule of professional conduct regarding the making of false statements of fact or law to a tribunal when she submitted a Criminal Justice Act voucher for payment of attorney fees for work that she performed for indigent client that she knew contained charges for work that was not performed. In re Cleaver-Bascombe, 892 A.2d 396, 2006 D.C. App. LEXIS 29 (2006).

Attorney's submission of at least 27 false vouchers for work allegedly performed pursuant to appointment under Criminal Justice Act (CJA) warranted 90-day suspension from practice of law. In re Mendoza, 885 A.2d 317, 2005 D.C. App. LEXIS 544 (2005).

Attorney's submission of vouchers for work allegedly performed pursuant to appointment under Criminal Justice Act (CJA), which vouchers were not submitted to court for payment or did not reflect what was later submitted to court for payment, violated professional conduct rule prohibiting dishonesty, fraud, deceit or misrepresentation. In re Mendoza, 885 A.2d 317, 2005 D.C. App. LEXIS 544 (2005).

Attorney's conduct of signing names of co-counsel to document without noting in every instance that he was executing document on their behalf violated rule prohibiting attorney from engaging in conduct involving dishonesty,

fraud, deceit, and misrepresentation. In re Howard, 879 A.2d 681, 2005 D.C. App. LEXIS 383 (2005).

Suspension of thirty days was warranted for attorney who submitted to Probate Division verified documents that he had signed with clients' names and had improperly notarized. In re Uchendu, 812 A.2d 933, 2002 D.C. App. LEXIS 745 (2002).

Attorney's submission to Probate Division of documents that he had notarized after signing his clients' names violated rules prohibiting making a false statement of material fact or law to a tribunal and prohibiting attorney from engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation, even if the documents were substantively accurate and attorney had no intent to defraud his clients. In re Uchendu, 812 A.2d 933, 2002 D.C. App. LEXIS 745 (2002).

Attorney's submission to Probate Division of documents that were signed by him without initials or other indication that his clients were not the actual signatories violated rules prohibiting making a false statement of material fact or law to a tribunal and prohibiting attorney from engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation, even if the documents were substantively accurate and attorney had no intent to defraud his clients. In re Uchendu, 812 A.2d 933, 2002 D.C. App. LEXIS 745 (2002).

Former client's forging of documents in attempt to bolster its underlying suit for breach of contract, did not bar client from bringing malpractice action against attorneys, where client's wrongdoing was not central to damages it was seeking. Breezevale Ltd. v. Dickinson, 783 A.2d 573, 2001 D.C. App. LEXIS 221 (2001).

Moral fitness of attorney to practice law, for purposes of discipline, is placed into serious question by misconduct in creating evidence, falsifying documents, forging signatures on documents, and forging notarizations of documents. In re Goffe, 641 A.2d 458, 1994 D.C. App. LEXIS 69 (1994).

Altering eight credit card receipts submitted to law firm for travel expense reimbursement violates disciplinary rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation, even if alteration is not meant to deceive client or law firm and altered receipts accurately reflect amount owed. Code of Prof.Resp., DR 1-102(A)(4). In re Schneider, 553 A.2d 206, 1989 D.C. App. LEXIS 9 (1989).

If attorney knowingly proffers altered documents in context where attorney knows or should know that action may be taken thereon, attorney has engaged in conduct involving deceit in violation of disciplinary rule, whatever ultimate intent or motives may have been in making such alterations; latter may go to sanc-

tion, but not to threshold issue of violation vel non. Code of Prof.Resp., DR 1-102(A)(4). In re Schneider, 553 A.2d 206, 1989 D.C. App. LEXIS 9 (1989).

— In general.

Attorney, who by fraud on client and on attorney for deceased assignee of part of fee for services rendered deceased client, succeeded in gaining pecuniary advantage for himself at expense of either or both of other parties, held properly disbarred. Fletcher v. Laws, 64 F.2d 163, 1933 U.S. App. LEXIS 4036 (1933).

Any conduct violative of the ordinary standards of professional obligations and honor is unprofessional and disreputable. Garfield v. U.S. ex rel. Stevens, 32 App.D.C. 109 (1908).

Under District of Columbia law, professional disciplinary violations arise from attorney's malfeasance, not actual harm imposed on client. Nwachukwu v. Rooney, 362 F.Supp.2d 183, 2005 U.S. Dist. LEXIS 3293 (2005).

Under District of Columbia law, judicial immunity protects judges and officials performing quasi-judicial functions from liability for given act if: (1) act was not taken in clear absence of all jurisdiction, and (2) act is judicial act. Nwachukwu v. Rooney, 362 F.Supp.2d 183, 2005 U.S. Dist. LEXIS 3293 (2005).

Violation of mandatory provisions of disciplinary rules of Code of Professional Responsibility may be penalized by disciplinary action, disqualification, or disgorgement of attorney fees. ABA Code of Professional Responsibility, DR1-101 et seq. Financial Gen. Bankshares v. Metzger, 523 F. Supp. 744, 1981 U.S. Dist. LEXIS 18003 (1981), vacated by, remanded by 680 F.2d 768, 220 U.S. App. D.C. 219, 1982 U.S. App. LEXIS 19172, 34 Fed. R. Serv. 2d (Callaghan) 17, Fed. Sec. L. Rep. (CCH) P98674 (1982).

If an attorney's honesty has been successfully impugned, he should no longer be permitted to practice before the court. In re Williams, 158 F.Supp. 279, 1957 U.S. Dist. LEXIS 2416 (D.D.C.1957).

Attorney's failure to respond to repeated inquiries from bar counsel and to compliance orders from Board on Professional Responsibility in connection with ethical complaints violated District of Columbia bar rules. In re Solomon, 945 A.2d 614, 2008 D.C. App. LEXIS 113 (2008).

Attorney's misconduct during child support hearing, in submitting altered checks to hearing court and making false statements to the court claiming he made more payments than he actually had, violated rules of professional conduct prohibiting making a false statement of material fact to a tribunal, altering evidence, falsifying evidence, violating the rules through the acts of another, committing a criminal act that reflects adversely on the lawyer's honesty,

trustworthiness, or fitness as a lawyer, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and engaging in conduct that seriously interferes with the administration of justice. In *re* Mayers, 943 A.2d 1170, 2008 D.C. App. LEXIS 102 (2008).

Attorney's acts of dishonesty, including his misrepresentation that state of Arkansas wished to hire him on a contingency fee basis in an environmental lawsuit and his preparation and forgery of contingency fee agreement purportedly signed by assistant attorney general of Arkansas, violated rule of professional conduct prohibiting lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. In *re* Slaughter, 929 A.2d 433, 2007 D.C. App. LEXIS 469 (2007).

Failure by attorney on interim suspension from practice of law to disclose in application for admission to Colorado bar his admission to practice in District of Columbia or interim suspension violated Rules of Professional Conduct by knowingly making false statement of material fact in connection with admission application, by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and by engaging in conduct that seriously interfered with administration of justice. In *re* Powell, 898 A.2d 365, 2006 D.C. App. LEXIS 206 (2006).

Attorney's failure to cooperate in three disciplinary investigations warranted 90-day suspension from practice of law. In *re* Cater, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

Attorney's conduct in failing to respond to Bar Counsel's letters during investigation of disciplinary complaint filed against him, regardless of whether letters were mailed to attorney's address, served by messenger, sent by certified mail, or transmitted by fax, warranted public censure. In *re* Kaufman, 878 A.2d 1187, 2005 D.C. App. LEXIS 330 (2005).

Attorney's violation of professional conduct rules requiring competent representation, representation of clients with skill and care of similarly situated practitioners, adherence to client's objectives, diligence and zeal in representation, reasonable promptness in representation, and communication with clients warranted 60-day suspension from practice of law, with reinstatement conditioned on restitution to client, consecutive to 30-day suspension ordered in another matter, in light of attorney's extensive disciplinary history, including multiple suspensions and informal admonishments, where such sanction was not inconsistent with discipline imposed in cases involving similar violations. In *re* Kaufman, 878 A.2d 1187, 2005 D.C. App. LEXIS 330 (2005).

Attorney's actions in filing frivolous adversary claims in bankruptcy proceedings warranted 30-day suspension from practice of law; attorney failed to communicate with client

throughout entire representation, failed to convey offer to settle case, allowed money sanctions to be entered against client's corporation, undertook action for purpose of advancing interests of other clients, seriously interfered with administration of justice, and failed to acknowledge seriousness of his conduct, and delays in proceedings did not mitigate sanction absent meritorious argument challenging substance of proceedings or evidence of prejudice. In *re* Thyden, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Disbarment was warranted for attorney's violation of rules of professional conduct by failing to act with reasonable promptness in representing client, failing to keep client reasonably informed about status of matter, failing to take timely steps to protect client's interest upon termination, failing to act with candor toward tribunal, knowingly making false statement of material fact or law to third person, practicing law in another jurisdiction in violation of its regulations, making false or misleading communications about lawyer's services, failing to respond reasonably to lawful demand by disciplinary authority for information, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation or conduct seriously interfering with the administration of justice, and failing to comply with order of court or Board on Professional Responsibility. In *re* Anya, 871 A.2d 1181, 2005 D.C. App. LEXIS 159 (2005).

Public censure and requirement that attorney complete a course in professional responsibility were appropriate sanctions for attorney who failed to take timely steps to protect client's interests in termination of representation, failed to represent client zealously, failed to act with reasonable promptness, failed to keep client reasonably informed, and engaged in conduct that seriously interfered with administration of justice. In *re* Shepherd, 870 A.2d 67, 2005 D.C. App. LEXIS 41 (2005).

Disbarment was appropriate sanction for attorney who prepared a testamentary instrument which conveyed property to himself and his immediate family. In *re* Shepherd, 870 A.2d 67, 2005 D.C. App. LEXIS 41 (2005).

Attorney's lack of diligence in representation, failure to keep clients informed, failure to respond to disciplinary authority and bar inquiries, commingling of client and personal funds, and failure to keep trust account records, as established in three disciplinary actions involving 18 clients in original disciplining jurisdiction, warranted imposition of reciprocal three-year suspension from practice of law, with fitness requirement for reinstatement. In *re* Winick, 866 A.2d 51, 2005 D.C. App. LEXIS 8 (2005).

Thirty-day suspension with reinstatement conditioned upon attorney's filing a response to

the disciplinary complaint and his completion of six hours of continuing legal education courses was appropriate sanction for attorney who failed to respond to disciplinary authority, who seriously interfered with the administration of justice, and who failed to comply with an order of the Board on Professional Responsibility. In re Scanlon, 865 A.2d 534, 2005 D.C. App. LEXIS 1 (2005).

In reciprocal disciplinary proceeding, attorney's unauthorized practice of law in Maryland, for which he was disbarred, constituted "misconduct" within the meaning of District of Columbia's ethical rules. In re Barneys, 861 A.2d 1270, 2004 D.C. App. LEXIS 619 (2004).

Attorney's violations of rules of professional conduct requiring competent and diligent representation, prohibiting conflicts of interest, and governing termination of representation warranted 90-day suspension from practice of law, in absence of any significant mitigating circumstance and in light of aggravating circumstances, namely, attorney's record of informal admonishments and public censures for neglect of other client matters. In re Douglass, 859 A.2d 1069, 2004 D.C. App. LEXIS 520 (2004).

In an attorney disciplinary proceeding, what is the appropriate sanction necessarily turns on the nature of the attorney's misconduct. In re Austin, 858 A.2d 969, 2004 D.C. App. LEXIS 432 (2004).

Disbarment of attorney was warranted, in attorney disciplinary proceeding, where attorney obtained loans totaling over \$27,000.00 from an elderly, uneducated client of very little means, he failed to repay client for the loans, and he sent a letter to client's new lawyer, which was purportedly from client, which informed new lawyer that client no longer needed the services of new lawyer and would work out her problems with attorney. In re Austin, 858 A.2d 969, 2004 D.C. App. LEXIS 432 (2004).

The Court of Appeals determines what the appropriate attorney disciplinary sanction should be by considering the nature of the violation, aggravating and mitigating circumstances, the absence or presence of prior disciplinary sanctions, the moral fitness of the attorney, and the need to protect the legal profession, the courts, and the public. In re Bettis, 855 A.2d 282, 2004 D.C. App. LEXIS 415 (2004).

Attorney's previous misconduct constituted an aggravating factor to be considered when determining appropriate sanction during attorney's second disciplinary proceeding; attorney's first disciplinary proceeding was based on a conviction for driving while intoxicated, theft, and possession of narcotics, the second proceeding involved attorney's unauthorized practice of law while she was under suspension from the first proceeding, and the second proceeding

occurred after attorney presented evidence that she had been rehabilitated and her substance abuse was no longer affecting her judgment. In re Soininen, 853 A.2d 712, 2004 D.C. App. LEXIS 388 (2004).

Suspension in District of Columbia for 30 days with reinstatement subject to demonstration of fitness, rather than disbarment, which was the sanction imposed in Maryland, was warranted as reciprocal discipline for attorney's lack of diligence, lack of communication with client, and failure to protect client's interest in connection with terminating representation, where attorney had disappeared and likelihood of application for readmission was remote, and at time of misconduct, advances of legal fees were an attorney's property in District of Columbia while in Maryland apparently they were the client's property until earned by the attorney. In re Spitzer, 845 A.2d 1137, 2004 D.C. App. LEXIS 76 (2004).

Informal admonition letters issued, in other cases, by Bar Counsel on its own accord or at the direction of the Board of Professional Responsibility or the Court of Appeals, may contain sufficient detail to be useful to the Board or the Court of Appeals in determining the range of sanctions appropriate in similar circumstances. In re Schlemmer, 840 A.2d 657, 2004 D.C. App. LEXIS 1 (2004).

An appropriate attorney disciplinary sanction will be based on a consideration of all relevant factors, including: (1) the nature of the violation; (2) the mitigating and aggravating circumstances; (3) the need to protect the public, the courts, and the legal profession; and (4) the moral fitness of the attorney. In re Schlemmer, 840 A.2d 657, 2004 D.C. App. LEXIS 1 (2004).

Attorney's false statement in connection with his application for admission to District of Columbia Bar that legal work he had been doing was supervised by licensed attorney, serious neglect of obligations to clients, failure to provide competent representation, abandonment of clients, and failure to withdraw as counsel after accepting employment leaving him unable to satisfy his obligations to his private clients, warranted six-month suspension from practice of law. In re Starnes, 829 A.2d 488, 2003 D.C. App. LEXIS 483 (2003).

Six-month suspension from practice of law imposed upon attorney following finding of multiple ethical violations and violations of court rules was not unduly punitive or inconsistent with sanctions meted out in comparable cases to protect public. In re Starnes, 829 A.2d 488, 2003 D.C. App. LEXIS 483 (2003).

What may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty, for purposes of ethics rule, precluding attorneys from engaging in acts of dishonesty, fraud, deceit or misrepresentation.

tation. In re Romansky, 825 A.2d 311, 2003 D.C. App. LEXIS 305 (2003).

Obtaining the best possible outcome for one's clients is never a viable defense to charges of ethical misconduct; the ends do not justify the means. In re Hager, 812 A.2d 904, 2002 D.C. App. LEXIS 724 (2002).

Attorney's knowing and intentional commingling and misappropriating of client funds by depositing them into his operating account rather than a trust account, and his inadvertent failure to promptly disburse from settlement proceeds a payment due a third party, warranted public censure. In re Graham, 795 A.2d 51, 2002 D.C. App. LEXIS 69 (2002).

Attorney's commingling of personal funds with clients' funds held in trust, which he would use at times as an operating account, a practice which ultimately resulted in his negligent misappropriation of a portion of entrusted client funds required to be held on behalf of a third-party medical provider, warranted six-month suspension; although attorney contended that mitigating factors warranted a lesser sanction, the commingling continued after the misappropriation until Bar Counsel, alerted of an overdraft, began its investigation. In re Davenport, 794 A.2d 602, 2002 D.C. App. LEXIS 68 (2002).

Attorney's failure to keep fiduciary funds separate from his own, failure to promptly withdraw from case and surrender client files to successor counsel, failure to promptly deliver client funds once representation terminated, careless record keeping, and filing of complaint falsely identifying himself as counsel warranted one-year suspension from practice of law. In re Arneja, 790 A.2d 552, 2002 D.C. App. LEXIS 25 (2002).

Disbarment of attorney can be warranted for conduct involving severe acts of dishonesty. In re Rocca, 786 A.2d 560, 2001 D.C. App. LEXIS 250 (2001).

Imposition of sanctions in bar discipline, as with criminal punishment, is not an exact science but may depend on the facts and circumstances of each particular proceeding. In re Fair, 780 A.2d 1106, 2001 D.C. App. LEXIS 200 (2001).

The court generally imposes a public censure or short-term suspension for a violation of the rule requiring competent representation. In re Fair, 780 A.2d 1106, 2001 D.C. App. LEXIS 200 (2001).

Public censure was warranted for attorney's conduct in charging \$800 on an uncontested claim for personal injury protection (PIP) benefits paid under automobile insurance policy and failing to notify client's health insurer, which had lien on settlement proceeds, of the receipt of PIP benefits. In re Shaw, 775 A.2d 1123, 2001 D.C. App. LEXIS 142 (2001).

Conduct of attorney in failing to inform client, who he had represented in workers' compensation matter, that amount of his fee had been limited by Industrial Commission, retaining funds in excess of his approved fee, and depositing funds from settlement of client's case in his own personal account, involved the charging of an excessive fee, commingling of client funds, and dishonesty, and warranted nine-month suspension from practice of law, with reinstatement conditioned on attorney's payment of restitution to client, and completion of a continuing legal education course on professional responsibility. In re Bernstein, 774 A.2d 309, 2001 D.C. App. LEXIS 125 (2001).

Failure to respond to Bar Counsel's inquiries about ethical complaint, failure to comply with order of Board on Professional Responsibility requiring response to complaint, and indefinite suspension in another jurisdiction, warranted thirty-day suspension. In re Freed, 773 A.2d 436, 2001 D.C. App. LEXIS 122 (2001).

Plea of guilty to making false statements to Immigration and Naturalization Service in connection with representation of client applying to become naturalized citizen warranted one year suspension. In re Bowser, 771 A.2d 1002, 2001 D.C. App. LEXIS 99 (2001).

Attorney misconduct in court or during course of legal proceedings may be subject of both disciplinary proceedings and trial court's own procedures to deal with such matters. In re Solerwitz, 575 A.2d 287, 1990 D.C. App. LEXIS 126 (1990).

— Misappropriation and failure to account, grounds for discipline.

Doctrine of contributory negligence did not apply to bar legal malpractice claim against former attorney for testator's estate by personal representatives of estate, where it was unclear whether failure of estate to file timely income tax returns was due to a lack of diligence or dereliction of duty on part of the personal representatives, who were also beneficiaries of estate, or, rather, due to personal representatives' reasonable reliance on erroneous advice of estate's former attorney, nor was it clear as to whether, or how, personal representatives and estate's former attorney, who was also a former co-personal representative of estate, had allocated the various duties of a personal representative. *Pair v. Queen*, 2 A.3d 1063, 2010 D.C. App. LEXIS 497 (2010).

Two-year suspension, with a fitness requirement for reinstatement, would be imposed upon attorney who negligently misappropriated settlement funds in his trust account that belonged to one client, failed to keep records sufficient to account for his handling of another client's personal injury protection (PIP) checks or the assigned claims of that client's medical services providers, failed to promptly notify and

pay that client's medical providers from settlement proceeds, and made false statements in the course of Bar Counsel's investigation into the handling of funds in the matter involving the second client. In re Boykins, 999 A.2d 166, 2010 D.C. App. LEXIS 409 (2010).

Attorney's misappropriation of client's funds deposited in her escrow account, by allowing balance of escrow account to fall below the amount that client had entrusted with her and by failing to return the remaining \$1,000 of the original \$2,000 amount, was intentional rather than negligent, for purposes of determining whether attorney's conduct warranted disbarment or a lesser sanction; attorney not only allowed the balance in her escrow account to drop below the amount client entrusted, attorney also used client's money for her own purposes, when client asked for the return of \$1,000 of his original \$2,000 attorney was forced to deposit additional money into escrow account in order to cover \$1,000 check to client, and misappropriation was not the result of sloppy billing. In re Edwards, 990 A.2d 501, 2010 D.C. App. LEXIS 95 (2010), writ of certiorari denied by 131 S. Ct. 2942, 180 L. Ed. 2d 227, 2011 U.S. LEXIS 4041, 79 U.S.L.W. 3672 (U.S. 2011).

Evidence was sufficient to establish, by clear and convincing proof at hearing in attorney disciplinary proceeding regarding whether attorney had misappropriated client's funds, that \$2,000 cashier's check client delivered to attorney during client's bankruptcy proceeding was entrusted as client's property rather than for attorney fees, and that attorney knew that such was the case; client testified that he entrusted attorney with the check in order to foreclose foreclosure procedures on his condominium or to settle arrears on his mortgage payments, attorney deposited the check into her escrow account, attorney did not provide client with a receipt crediting him with payment of fees, when client requested the return of \$1,000 from such amount attorney wrote client a check in the sum of \$1,000 from escrow account, and in initial letter to Bar Counsel attorney stated that client had provided the funds to settle arrears on his mortgage. In re Edwards, 990 A.2d 501, 2010 D.C. App. LEXIS 95 (2010), writ of certiorari denied by 131 S. Ct. 2942, 180 L. Ed. 2d 227, 2011 U.S. LEXIS 4041, 79 U.S.L.W. 3672 (U.S. 2011).

Five-year suspension from the practice of law, with a fitness requirement for reinstatement, was warranted, in reciprocal discipline case; Massachusetts indefinitely suspended attorney from the practice of law after he intentionally and fraudulently caused four checks from his employer to be converted for his personal use, attorney made full restitution to his employer, and five year suspension was the functional equivalent of Massachusetts's indef-

inite suspension since an attorney indefinitely suspended from the practice of law in Massachusetts could apply for readmission after five years. In re Edwards, 990 A.2d 501, 2010 D.C. App. LEXIS 95 (2010), writ of certiorari denied by 131 S. Ct. 2942, 180 L. Ed. 2d 227, 2011 U.S. LEXIS 4041, 79 U.S.L.W. 3672 (U.S. 2011).

Disbarment was warranted for attorney who had recklessly or intentionally misappropriated client's settlement funds that attorney falsely represented had been used to pay client's medical providers, where attorney when he misappropriated funds was aware he was being investigated by Bar Counsel for similar conduct with another client, attorney had significant previous sanctions for ethical violations, including the prior suspension, a reprimand and an informal admonition, and attorney was less than candid during Bar Counsel's investigation. In re Anderson, 979 A.2d 1206, 2009 D.C. App. LEXIS 385 (2009).

Single instance of misappropriation of a modest sum of client funds warranted disbarment. In re Bach, 966 A.2d 350, 2009 D.C. App. LEXIS 36 (2009).

Arizona disciplinary proceeding did not find that attorney's misappropriations were either intentional or reckless so as to warrant the greater sanction of disbarment; rather, the identical reciprocal discipline of suspension was warranted for attorney's misconduct in Arizona. In re Reed, 950 A.2d 35, 2008 D.C. App. LEXIS 258 (2008).

Evidence was sufficient that attorney consciously and knowingly failed to pay workers' compensation carrier full amount of statutory lien on client's settlement with tortfeasor for more than four years, so as to support Board on Professional Responsibility's reckless misappropriation finding; payment was finally forthcoming only after the filing of a lawsuit and the initiation of a disciplinary proceeding, even though attorney had access long before then to money he could have used to pay carrier, and attorney's testimony showed that the primary reason for his delay in paying was his belief that carrier was at fault, not any inability on his part to make the payment. In re Cloud, 939 A.2d 653, 2007 D.C. App. LEXIS 841 (2007).

Attorney's failure to maintain financial records relating to his escrow account did not amount to reckless misconduct, where ledger was lost inadvertently during an office move. In re Cloud, 939 A.2d 653, 2007 D.C. App. LEXIS 841 (2007).

Attorney's failure to pay workers' compensation carrier full amount of statutory lien on client's settlement with tortfeasor, after misunderstanding about amount owed was corrected, constituted reckless misappropriation of client funds, where attorney did not pay carrier in full until more than four years later and only after formal disciplinary proceedings had been

brought and carrier filed lawsuit against attorney. In re Cloud, 939 A.2d 653, 2007 D.C. App. LEXIS 841 (2007).

Attorney's losing of cashier's check that was made out to workers' compensation carrier and paid from client's settlement with tortfeasor, did not constitute reckless misappropriation; inference of reckless conduct could not be based simply on the check's disappearance, and attorney did not display the conscious indifference necessary for a finding of recklessness. In re Cloud, 939 A.2d 653, 2007 D.C. App. LEXIS 841 (2007).

Attorney's conduct in keeping part of client funds that were owed to workers' compensation carrier in an operating account, rather than in escrow account, was not reckless misappropriation of client funds; placing entrusted funds in an operating account instead of escrow account, but maintaining a balance sufficient to cover the funds, constituted commingling, such that attorney was guilty of simple negligence, in the absence of aggravating factors. In re Cloud, 939 A.2d 653, 2007 D.C. App. LEXIS 841 (2007).

In making the distinction between negligent and reckless misappropriation, to determine whether disbarment is warranted, the inquiry focuses on whether the lawyer handled the entrusted funds in a way that suggests the unauthorized use was inadvertent or the result of simple negligence, or in a way that reveals either an intent to treat the funds as the attorney's own or a conscious indifference to the consequences of his behavior. In re Cloud, 939 A.2d 653, 2007 D.C. App. LEXIS 841 (2007).

In assessing whether attorney's conduct in misappropriating client funds rose to the level of recklessness, as would warrant disbarment, the Court of Appeals would ascertain whether the attorney engaged in a pattern or course of conduct demonstrating an unacceptable disregard for the welfare of entrusted funds. In re Cloud, 939 A.2d 653, 2007 D.C. App. LEXIS 841 (2007).

When the evidence shows intentional or reckless misappropriation of client funds, disbarment is the appropriate sanction in nearly all cases, unless there are extraordinary circumstances that justify a lesser sanction. In re Cloud, 939 A.2d 653, 2007 D.C. App. LEXIS 841 (2007).

In general, misappropriation in violation of professional rules occurs when the balance in an attorney's bank account or accounts falls below the amount due to the client. In re Cloud, 939 A.2d 653, 2007 D.C. App. LEXIS 841 (2007).

Attorney's conduct, which included misappropriation of client funds, failure to maintain complete records, render appropriate accounts, or notify client of receipt of funds, failure to return any prepaid unearned fees to client until 13 years after representation ended, and fail-

ure to do any work on behalf of client in connection with filing deed and related tax forms, or to notify client that he had not filed deed or prepared related tax form, violated rules of professional conduct, including rule governing safekeeping of client property, rule prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and rule requiring lawyers to represent client zealously and diligently within the bounds of the law. In re Brown, 912 A.2d 568, 2006 D.C. App. LEXIS 638 (2006).

Disbarment, stayed, and three years of probation subject to conditions imposed by the Board on Professional Responsibility, were appropriate sanctions for attorney's misconduct in misappropriating client's funds, when he used funds in client trust fund account for personal and business expenses, given mitigating circumstance of attorney's depression, and attorney's continuing treatment for the depression. In re Mooers, 910 A.2d 1046, 2006 D.C. App. LEXIS 621 (2006).

Attorney's failure to keep appropriate trust account records, to notify and promptly pay third parties by failing to disburse funds to two providers after settling personal injury case, to supervise employees, to cooperate with disciplinary authority, and to comply with court order, and his interference with administration of justice, violated Rules of Professional Conduct and Bar Rule which required attorneys to safekeep client property and to take responsibility with respect to nonlawyer assistants and which prohibited engaging in conduct that seriously interfered with administration of justice. In re Toppelberg, 906 A.2d 881, 2006 D.C. App. LEXIS 513 (2006).

Evidence was sufficient to establish that attorney violated several rules of professional conduct, including misappropriation of entrusted funds and failure to keep complete records, failure on termination of representation to surrender property to which client was entitled, criminal act of dishonesty, and conduct involving dishonesty, fraud, deceit, or misrepresentation so as to warrant disbarment, surrender of client's property in his possession, and reinstatement to bar contingent on his having made full restitution to client. In re Rogers, 902 A.2d 103, 2006 D.C. App. LEXIS 356 (2006).

Remand was necessary in attorney discipline case due to the Court of Appeals inability to reconcile satisfactorily the Board of Professional Responsibility's conclusion that attorney submitted a patently fraudulent voucher for attorney fees under the Criminal Justice Act with the Board's position that the hearing committee's findings did not support the conclusion that attorney presented false evidence or testimony; there would be a significant difference, for purposes of an appropriate sanction, be-

tween an attorney's deliberate fabrication of a claim and perjurious defense of it before the hearing committee and, on the other hand, her engaging, without an intent to defraud, in record-keeping so shoddy that it was the legal equivalent of dishonesty, but then presenting a legitimate defense without fabrication or perjury. In re Cleaver-Bascombe, 892 A.2d 396, 2006 D.C. App. LEXIS 29 (2006).

Misappropriation warrants disbarment, as attorney disciplinary sanction in District of Columbia. In re Zdravkovich, 891 A.2d 258, 2006 D.C. App. LEXIS 23 (2006).

Attorney's violations of New Jersey's Rules of Professional Conduct warranted reciprocal and identical discipline of disbarment, where violations at issue comprised violations of comparable District of Columbia Rules of Professional Conduct, there was no miscarriage of justice in New Jersey proceedings, New Jersey proceedings established misconduct including misappropriation of client funds and dishonesty, disbarment was not so excessive as to be grossly unjust, and attorney filed no opposition to bar counsel's recommendation of disbarment. In re Gruber, 889 A.2d 991, 2005 D.C. App. LEXIS 649 (2005).

Attorney's conduct as court-appointed guardian and conservator of client and client's estate violated rules of professional conduct requiring competent representation, representation with requisite skill and care, and segregation of client funds, and prohibiting conduct seriously interfering with the administration of justice; attorney never posted bond as required by her appointment, failed to file any required accounts or reports with court, failed to file suggestion of death after client passed away, and distributed estate funds and paid herself legal fees without knowledge or approval of court. In re Gruber, 889 A.2d 991, 2005 D.C. App. LEXIS 649 (2005).

For purposes of determining appropriate disciplinary sanction against attorney whose failure to make reasonable efforts to ensure that conduct of non-attorney employee was compatible with her own professional obligations facilitated employee's embezzlement of client funds, attorney's conduct was not equivalent of negligent misappropriation of client funds; employee disobeyed attorney's instructions and violated attorney's trust, and attorney derived no personal gain or benefit from employee's misappropriation, but rather was heavily penalized by probate court in connection therewith. In re Cater, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

Misappropriation of client funds and dishonesty, if committed in the District of Columbia, justify disbarment. In re Smith, 886 A.2d 75, 2005 D.C. App. LEXIS 541 (2005).

Attorney's misappropriation of funds by deducting attorney fees from funds entrusted to

him despite dispute with client over manner in which funds were to be disbursed, compounded by repeated instances of failure to provide a timely accounting, and by signing, and then not disclosing that he had signed, a document without the client's authorization, conduct evincing dishonesty, warranted eighteen-month suspension. In re Midlen, 885 A.2d 1280, 2005 D.C. App. LEXIS 554 (2005), writ of certiorari denied by 549 U.S. 825, 127 S. Ct. 349, 166 L. Ed. 2d 42, 2006 U.S. LEXIS 5893, 75 U.S.L.W. 3165 (2006).

Attorney was negligent in misappropriating funds he should have segregated pending resolution of his dispute with client, rather than deducting fees before remitting to client balance of royalties received by attorney on client's behalf, but his actions did not reflect the heightened culpability for recklessness required for disbarment; attorney's entitlement to the fees he withdrew was not ultimately challenged and, indeed, client subsequently paid additional amounts to attorney to settle dispute. In re Midlen, 885 A.2d 1280, 2005 D.C. App. LEXIS 554 (2005), writ of certiorari denied by 549 U.S. 825, 127 S. Ct. 349, 166 L. Ed. 2d 42, 2006 U.S. LEXIS 5893, 75 U.S.L.W. 3165 (2006).

A six-month suspension without a fitness requirement is the norm for attorneys who have committed negligent misappropriation of entrusted funds together with related violations. In re Edwards, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

Six month suspension was appropriate discipline for attorney who negligently misappropriated client funds, and in lieu of requiring attorney to demonstrate fitness as condition of reinstatement, attorney would be required to complete appropriate continuing legal education (CLE) and to allow practice monitor to oversee her record keeping, escrow accounts, and handling of client funds, and practice monitor's oversight would continue after attorney's reinstatement for six months as condition of probation; attorney had practiced law for over three decades without having been disciplined previously, she did not profit personally from her misconduct, and her clients were not harmed. In re Edwards, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

Disbarment was appropriate sanction for attorney who was hired by clients to help them administer individual's estate and who embezzled a total of at least \$73,850 from that estate, and as a condition of reinstatement, attorney would be directed to pay restitution to the estate; evidence showed a calculated pattern, over a period of time, of withdrawals from fiduciary accounts that were deposited into attorney's personal account, coupled with a deliberate effort to conceal this fact from Bar Counsel, as well as from the representatives

and beneficiaries of the estate. In re Alexander, 865 A.2d 541, 2005 D.C. App. LEXIS 6 (2005).

In virtually all cases of misappropriation, disbarment will be the only appropriate sanction for attorney unless it appears that the misconduct resulted from nothing more than simple negligence. In re Alexander, 865 A.2d 541, 2005 D.C. App. LEXIS 6 (2005).

"Misappropriation," in context of attorney disciplinary action, is any unauthorized use of client's funds entrusted to a lawyer, including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom. In re Alexander, 865 A.2d 541, 2005 D.C. App. LEXIS 6 (2005).

Fraudulent misappropriation and theft by a fiduciary attorney warrants disbarment. In re Alexander, 865 A.2d 541, 2005 D.C. App. LEXIS 6 (2005).

Attorney's intentional or reckless misappropriation of thousands of dollars entrusted to him warranted disbarment. In re Rivlin, 856 A.2d 1086, 2004 D.C. App. LEXIS 409 (2004).

In virtually all cases of misappropriation, disbarment will be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence. In re Rivlin, 856 A.2d 1086, 2004 D.C. App. LEXIS 409 (2004).

In reciprocal disciplinary case, six month suspension was appropriate sanction for attorney who was suspended for 30 days in Maryland for writing a check on a trust account which reduced its balance to about \$300 below the escrowed funds belonging to a third party; six-month suspension was a norm for negligent misappropriation of entrusted funds, and the greater sanction of a six month suspension was warranted because attorney's misconduct warranted substantially different discipline in the District of Columbia. In re Rivlin, 856 A.2d 1086, 2004 D.C. App. LEXIS 409 (2004).

Attorney's prior disbarment for mishandling client funds required a harsher sanction than just public censure for his violation of rules regarding putting contingency fee arrangements in writing, delivering funds to a third-party claimant, and depositing funds in an escrow account, and thus, probation was warranted. In re Bettis, 855 A.2d 282, 2004 D.C. App. LEXIS 415 (2004).

The discipline that normally is warranted for intentional misappropriation is disbarment. In re Laibstain, 841 A.2d 1259, 2004 D.C. App. LEXIS 49 (2004).

Disbarment was appropriate disciplinary sanction for attorney's reckless misappropriation of client funds, involving two different clients. In re Thomas-Pinkney, 840 A.2d 700, 2004 D.C. App. LEXIS 5 (2004).

Attorney's gross dereliction of duty to her clients and her misappropriation of funds war-

ranted disbarment as reciprocal discipline. In re Ain, 837 A.2d 908, 2003 D.C. App. LEXIS 698 (2003).

Public censure was appropriate disciplinary sanction for attorney's failure to promptly notify client's physical therapist of attorney's receipt of settlement funds in personal injury action and failure to promptly pay therapist from those funds, and attorney's failure to keep complete records of disbursements of settlement funds. In re Clower, 831 A.2d 1030, 2003 D.C. App. LEXIS 555 (2003).

Attorney, who instructed associate to bill time she spent on account of attorney's father to another client who paid a flat fee, was dishonest, in violation of ethics rule that precluded attorneys from engaging in acts of dishonesty, fraud, deceit or misrepresentation, even though client did not suffer a financial loss from conduct. In re Romansky, 825 A.2d 311, 2003 D.C. App. LEXIS 305 (2003).

Attorney's conduct, including reckless or intentional misappropriation of client funds in two different guardianship matters and apparent plagiarization of brief in representation of criminal defendant, warranted disbarment; attorney was not entitled to mitigation, though he satisfactorily demonstrated that he suffered from an alcoholism-induced impairment at the time of his misconduct, since he failed to provide clear and convincing evidence that his impairment substantially caused his misconduct and that he has been rehabilitated. In re Ayeni, 822 A.2d 420, 2003 D.C. App. LEXIS 226 (2003).

Disbarment is the appropriate sanction in nearly all cases of intentional or reckless misappropriation. In re Ayeni, 822 A.2d 420, 2003 D.C. App. LEXIS 226 (2003).

Misappropriation of commingled funds includes any instance—however minor—when a commingled account falls below the amount due the client, an event that ordinarily signals unauthorized temporary use of client funds, which violates the Rules of Professional Conduct whether the lawyer benefited personally or not. In re Smith, 817 A.2d 196, 2003 D.C. App. LEXIS 87 (2003).

In virtually all cases of misappropriation, disbarment will be the only appropriate sanction unless it appears that the misconduct resulted from nothing more than simple negligence. In re Koven, 815 A.2d 770, 2003 D.C. App. LEXIS 21 (2003).

Attorney engaged in misappropriation with regard to client's funds when she deposited in her operating account the check that client gave her for settlement of judgment, and attorney then allowed balance in her operating account to fall below the amount given to her by client to satisfy his debt. In re Edwards, 808 A.2d 476, 2002 D.C. App. LEXIS 546 (2002).

Evidence did not support finding that attorney engaged in misappropriation of client funds when she received two checks from client in amount of \$375 and \$500, both of which indicated that they were for "fees," and she deposited checks in her escrow account and then withdrew \$700 from the escrow account; record did not indicate what portion of the two checks, if any, was for settlement of bank's claim against client and what portion was for attorney's fees, thereby making it possible that attorney was entitled to the money she withdrew. In re Edwards, 808 A.2d 476, 2002 D.C. App. LEXIS 546 (2002).

Attorney did not engage in misappropriation of client funds when she received \$5,500 settlement check from insurance company on behalf of client, deposited it in her operating account, transferred \$4,000 of that money to her escrow account, disbursed sums from escrow account in accordance with settlement sheet, leaving a balance of \$333, and then made an apparently unauthorized payment of \$766.55 to another attorney for work performed in client's case, where there was no evidence that any client had any interest in the money remaining in escrow account at time that attorney drew the \$766.55 check. In re Edwards, 808 A.2d 476, 2002 D.C. App. LEXIS 546 (2002).

Attorney's deposit of \$5,500 settlement check in her operating account when the account carried a negative balance of \$103.60, which effectively reduced amount of deposit to \$5,396.40, did not constitute misappropriation of client's funds, where balance in operating account after the deposit was sufficient to cover amount still due to client pursuant to settlement sheet. In re Edwards, 808 A.2d 476, 2002 D.C. App. LEXIS 546 (2002).

Evidence that attorney, after disbursing settlement funds from escrow account in accordance with settlement agreement executed by client, wrote an additional check for \$650 against the escrow account, payable to "Cash," with an notation that said "Attorney's fees," was not sufficient to support finding that attorney engaged in misappropriation of client funds, although check might have been intended as payment of fees in client's case greater than amount to which attorney was entitled; attorney could not recall what the \$650 was for, and there was no evidence connecting \$650 check with client's case, aside from coincidence that check was written just a few days after execution of client's settlement sheet. In re Edwards, 808 A.2d 476, 2002 D.C. App. LEXIS 546 (2002).

Attorney's conduct in allowing balance in her escrow account to drop below \$430.86, after client had brought \$430.86 in cash to attorney's office in order to pay off outstanding debt owed to third party, did not constitute misappropriation of client's funds, where the cash was never

deposited in either attorney's escrow account or her operating account. In re Edwards, 808 A.2d 476, 2002 D.C. App. LEXIS 546 (2002).

To establish that attorney engaged in reckless misappropriation of client funds, Bar Counsel had to prove by clear and convincing evidence that attorney engaged in a pattern or course of conduct demonstrating an unacceptable disregard for the welfare of entrusted funds. In re Edwards, 808 A.2d 476, 2002 D.C. App. LEXIS 546 (2002).

Disbarment is the appropriate sanction in nearly all cases of intentional misappropriation of client funds for personal use. In re Lippman, 806 A.2d 1224, 2002 D.C. App. LEXIS 542 (2002).

Definition of "misappropriation" in attorney disciplinary proceeding as any unauthorized use of client's funds entrusted to the lawyer, including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not she derives any personal gain or benefit therefrom, does not require scienter; rather, it is essentially a per se offense. In re Carlson, 802 A.2d 341, 2002 D.C. App. LEXIS 369 (2002).

Evidence was sufficient to support finding that attorney engaged in a pattern or course of conduct demonstrating an unacceptable disregard for the welfare of entrusted funds for firm's condominium clients, and thus, attorney's conduct was not inadvertent or negligent, but constituted reckless misappropriation of client trust funds, warranting disbarment; although attorney contended that any actions she took that related to the account was only at express direction of her partner, attorney admitted knowing that use of the clients' escrow account was wrong, that she had personally deposited some of client's money into the escrow account and paid herself compensation out of that account, and attorney personally wrote numerous checks on the escrow account made out to cash when she knew about requests from the clients for accountings. In re Carlson, 802 A.2d 341, 2002 D.C. App. LEXIS 369 (2002).

Attorney who previously had been disbarred for intentionally misappropriating client funds would be required to make restitution to the client of the illegal \$500 fee that attorney received, with interest at the legal rate of six percent per annum, as a condition of reinstatement; the obligation to pay interest was intertwined with the obligation to make restitution. In re Jackson, 801 A.2d 38, 2002 D.C. App. LEXIS 300 (2002).

In virtually all attorney discipline cases involving intentional or reckless misappropriation, disbarment is the appropriate sanction. In re Ladas, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

For purposes of attorney disciplinary proceedings, "misappropriation" is any unauthorized use of a client's funds entrusted to the attorney, including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom. In *re* Ladas, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

Although not a *per se* rule, in virtually all attorney disciplinary cases involving misappropriation, disbarment will be the only appropriate action unless it appears that the misconduct resulted from nothing more than simple negligence, and a lesser sanction is regarded as appropriate only in extraordinary circumstances. In *re* Ladas, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

Misappropriation by an attorney is defined as any unauthorized use by an attorney of a client's funds entrusted to him or her, whether or not temporary or for personal gain or benefit. In *re* Davenport, 794 A.2d 602, 2002 D.C. App. LEXIS 68 (2002).

Disbarment was appropriate sanction for attorney who failed to pay medical providers out of settlement proceeds, and failed to notify providers of his receipt of funds. In *re* Gregory, 790 A.2d 573, 2002 D.C. App. LEXIS 27 (2002).

Attorney's use of Personal Injury Protection (PIP) payments held in trust account to pay personal and business expenses, which allowed his trust account to fall below amounts entrusted to him, did not constitute misappropriation of client funds, where clients consented to use of payments for litigation costs. In *re* Gregory, 790 A.2d 573, 2002 D.C. App. LEXIS 27 (2002).

To establish misappropriation of client funds, Bar Counsel must prove by clear and convincing evidence that the client did not consent to the attorney's use of the funds. In *re* Gregory, 790 A.2d 573, 2002 D.C. App. LEXIS 27 (2002).

Misappropriation is any unauthorized use of client's funds entrusted to an attorney, including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom. In *re* Fair, 780 A.2d 1106, 2001 D.C. App. LEXIS 200 (2001).

In virtually all cases of misappropriation, disbarment will be the only appropriate action unless it appears that the misconduct resulted from nothing more than simple negligence. In *re* Fair, 780 A.2d 1106, 2001 D.C. App. LEXIS 200 (2001).

Intentional or reckless misappropriation of client funds will result in disbarment, unless it appears that the misconduct resulted from nothing more than simple negligence, or save perhaps for extraordinary circumstances. In *re* Fair, 780 A.2d 1106, 2001 D.C. App. LEXIS 200 (2001).

Intentional or reckless misappropriation of client funds warranting disbarment means a showing that the attorney handled entrusted funds in a way that reveals either an intent to treat the funds as the attorney's own or a conscious indifference to the consequences of his behavior for the security of the funds. In *re* Fair, 780 A.2d 1106, 2001 D.C. App. LEXIS 200 (2001).

Conduct of attorney also acting as personal representative in taking a fee out of estate assets without the then-requisite prior court approval constituted negligent misappropriation, rather than "intentional and/or reckless" misappropriation warranting disbarment, where within a year, same type of conduct was legislatively determined to be utterly licit, attorney acted in context of ambiguous probate culture in which attorneys prepaid themselves from estates and subsequently sought court approval for fees, and attorney took estate funds not for her own use, but as satisfaction for accruing fees on a legitimate but premature claim, against funds which would ultimately be expected to be utilized for that purpose. In *re* Fair, 780 A.2d 1106, 2001 D.C. App. LEXIS 200 (2001).

Attorney's negligent mishandling tends to jeopardize client funds held in trust and undermines public confidence in the bar. In *re* Fair, 780 A.2d 1106, 2001 D.C. App. LEXIS 200 (2001).

Attorney's acts of misappropriation in taking a fee out of estate assets without the then-requisite prior court approval, and subsequently overpaying herself by sum of \$593.45, as well as other misconduct, including her neglect in failing to act with reasonable promptness and diligence, warranted 14-month suspension from practice of law. In *re* Fair, 780 A.2d 1106, 2001 D.C. App. LEXIS 200 (2001).

Disbarment is the presumptive remedy for misappropriation by an attorney. In *re* Bernstein, 774 A.2d 309, 2001 D.C. App. LEXIS 125 (2001).

Misappropriation is any unauthorized use of client's funds entrusted to a lawyer, including not only stealing but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom; improper intent is not required, as it is essentially a *per se* offense. In *re* Asher, 772 A.2d 1161, 2001 D.C. App. LEXIS 117 (2001).

Forging clients' names on settlement checks and depositing them into account used for personal and business expenses and entrusted funds constituted misappropriation of those funds. In *re* Asher, 772 A.2d 1161, 2001 D.C. App. LEXIS 117 (2001).

Attorney who accepted attorney fees from an estate, without filing with the probate court a petition for such fees, as was then required by statute, violated the disciplinary rule prohibit-

ing an attorney from collecting an illegal fee. In re Travers, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

Attorney who accepted attorney fees from an estate, without filing with the probate court a petition for such fees, as was then required by statute, did not violate professional responsibility rule requiring an attorney, when terminating representation, to timely refund any advance payment of attorney fees that had not been earned; there was no evidence that the attorney did not earn his fee or that it was unreasonable. In re Travers, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

Assuming, without deciding, that attorney who was joint signatory on estate account was "entrusted" with the funds in that account, any misappropriation by attorney, who had accepted attorney fees from the estate without filing with the probate court a petition for such fees, as was then required by statute, was negligent rather than intentional or reckless; attorney had "sincerely believed" that the statute had not applied to him, and he had obtained consents of heirs and had filed those consents with the court. In re Travers, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

Improper intent need not be shown, to establish unauthorized use of client's funds entrusted to an attorney. In re Travers, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

There are three elements of misappropriation of client funds by an attorney: (1) client funds were entrusted to the attorney; (2) the attorney used those funds for the attorney's own purposes; and (3) such use was unauthorized. In re Travers, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

To establish misappropriation of client funds, it is not enough for an attorney simply to violate a fiduciary duty; the attorney must have been "entrusted" with client funds and must have used those funds without permission. In re Travers, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

Attorney committed intentional misappropriation of client funds, as would warrant disbarment, where attorney used client's funds without her knowledge or permission, attorney lied to client and bar counsel about it, and attorney tried to cover it up with fraud, including fraudulently fabricated documents. Rules of Prof. Conduct, Rule 1.15(b). In re Thomas, 740 A.2d 538, 1999 D.C. App. LEXIS 259 (1999), writ of certiorari denied by 529 U.S. 1021, 120 S. Ct. 1425, 146 L. Ed. 2d 316, 2000 U.S. LEXIS 1953, 68 U.S.L.W. 3593 (2000).

"Misappropriation" is defined as any unauthorized use of client's funds entrusted to a lawyer, including not only stealing but also unauthorized temporary use for lawyer's own purpose, whether or not she derives any per-

sonal gain or benefit therefrom. In re Utley, 698 A.2d 446, 1997 D.C. App. LEXIS 170 (1997).

"Misappropriation" of client funds, for purposes of attorney disciplinary rules, concerns actual taking of client funds by attorney, whereas "commingling" involves placement of client funds in attorney's personal bank account with attendant risk of misappropriation. Code of Prof. Resp., DR 9-103(A)(2). In re Utley, 698 A.2d 446, 1997 D.C. App. LEXIS 170 (1997).

Attorney had charging lien, as opposed to a mere retaining lien, on trust account into which settlement proceeds had been deposited and from which it was agreed that lawyer's fee would come, for purposes of disciplinary action arising from attorney's withdrawal of \$4,000 from account without client's consent but based on client's prior offer to pay \$4,000 in full satisfaction of legal expenses. Code of Prof. Resp. DR 9-103(A)(2). In re Utley, 698 A.2d 446, 1997 D.C. App. LEXIS 170 (1997).

Fact attorney was legally entitled to amount withdrawn from client's trust account did not change nature of disagreement between parties, and attorney incorrectly withdrew funds at a time when the parties disagreed regarding attorney's entitlement to funds. In re Haar, 667 A.2d 1350, 1995 D.C. App. LEXIS 241 (1995).

Attorney violated misappropriation disciplinary rule when he reduced client trust fund below balance which was to be paid to client's doctor, even if attorney's conduct was inadvertent and negligent. Code of Prof. Resp., DR 9-103(A). In re Choroszej, 624 A.2d 434, 1992 D.C. App. LEXIS 343 (1992).

"Misappropriation" is any unauthorized use by attorney of client's funds entrusted to him or her, whether or not temporary or for personal gain or benefit; misappropriation is essentially per se violation for which improper intent is not element. Code of Prof. Resp., DR 9-103(A). In re Choroszej, 624 A.2d 434, 1992 D.C. App. LEXIS 343 (1992).

Misappropriation which occurs when balance in attorney's operating account into which client funds have been deposited falls below amount due to client is essentially per se offense; proof of improper intent is not required. Code of Prof. Resp., DR 9-103(A) (1990). In re Micheel, 610 A.2d 231, 1992 D.C. App. LEXIS 137 (1992).

Attorney's cocaine addiction cannot be considered mitigating factor in imposing sanctions for violations of rules governing conduct of lawyers absent showing, by preponderance of evidence, that, but for such addiction, misconduct would not have occurred, even assuming that addiction to illegal drug should be treated the same as alcohol addiction. In re Cooper, 591 A.2d 1292, 1991 D.C. App. LEXIS 163 (1991).

Failure to explain loss of client funds constitutes misappropriation warranting disbar-

ment. Code of Prof.Resp., DR 1-102(A)(4). In re Godfrey, 583 A.2d 692, 1990 D.C. App. LEXIS 320 (1990).

To warrant discipline, intent in misappropriating funds need not be "corrupt," and need not satisfy mens rea for theft or embezzlement under criminal laws. Bar Rule XI, § 7(3) (1989). In re Addams, 579 A.2d 190, 1990 D.C. App. LEXIS 190 (1990).

"Misappropriation" of a client's funds is any unauthorized use of client's funds entrusted to an attorney, including not only stealing but also unauthorized temporary use for lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom. ABA Code of Prof.Resp., DR9-102. In re Harrison, 461 A.2d 1034, 1983 D.C. App. LEXIS 403 (1983).

Improper intent is not an element to be considered in determining whether there has been a misappropriation of a client's funds by an attorney. ABA Code of Prof.Resp., DR9-102. In re Harrison, 461 A.2d 1034, 1983 D.C. App. LEXIS 403 (1983).

— Misconduct in other than professional capacity, grounds for discipline.

An attorney may be disbarred for conduct which shows that he is not a fit person to be an attorney, though such conduct is not official. Ex parte Burr, 4 F.Cas. 791, 1823 U.S. App. LEXIS 255 (1823).

Suspension imposed on attorney for nonpayment of bar dues was administrative and non-disciplinary, and thus bar was not required to proceed pursuant to bar rule applicable to disciplinary proceedings, where bar rule premised discipline on a finding of misconduct; nonpayment of dues did not constitute misconduct, and suspension for nonpayment of dues did not have consequences comparable to those imposed in disciplinary proceeding. *Sitcov v. D.C. Bar*, 885 A.2d 289, 2005 D.C. App. LEXIS 529 (2005).

Suspension for 90 days, with reinstatement conditioned on attorney proving his fitness to practice law and complying with all outstanding requests for information by Bar Counsel, was warranted as disciplinary sanction for attorney's failure to cooperate with investigations in two original discipline proceedings and one reciprocal discipline proceeding. In re Follette, 862 A.2d 394, 2004 D.C. App. LEXIS 636 (2004).

One year suspension with fitness requirement for reinstatement, rather than three year suspension that Board on Professional Responsibility would normally have recommended, was warranted for attorney who was convicted of third-degree securities fraud in New Jersey that constituted a serious crime and violated professional conduct rule generally defining misconduct, due to length of time that case was pending, through no fault of attorney, and at-

torney's interim suspension pending final determination. In re Brown, 851 A.2d 1278, 2004 D.C. App. LEXIS 336 (2004).

Sanction of three years' suspension from practice of law, with one year suspended in favor of two years' probation and no fitness requirement for reinstatement, was not inconsistent with prior dispositions of disciplinary matters for comparable conduct or otherwise unwarranted under circumstances, where attorney diverted over \$650,000.00 of his law firm's funds to his personal accounts over four-year period and intended to return to practice of law once his suspension was concluded, in light of mitigating circumstances including his self-report of his thefts, his efforts to enhance security of his law firm's funds in future, and his seeking counseling to address psychological problems. In re Weiss, 839 A.2d 670, 2003 D.C. App. LEXIS 705 (2003).

Kersey mitigation, for professional misconduct substantially affected by the attorney's addiction to lawfully obtained prescription drugs, may be used in appropriate cases where the misconduct has resulted in misdemeanor convictions of crimes not involving moral turpitude. In re Soinen, 783 A.2d 619, 2001 D.C. App. LEXIS 228 (2001).

Suspension of attorney for 30 days, but with Kersey mitigation for professional misconduct substantially affected by the attorney's addiction to lawfully obtained prescription drugs, so that the suspension would be stayed during two years of conditional probation, was appropriate for attorney whose misconduct had resulted in misdemeanor convictions for theft and possession of a controlled substance not obtained pursuant to a valid prescription. In re Soinen, 783 A.2d 619, 2001 D.C. App. LEXIS 228 (2001).

Attorney's creation of evidence, falsification of documents and forgery of signatures and notarizations in assisting his fiancée in Internal Revenue Service matter and in civil case involving his own property is related to practice of law, for purposes of discipline, even though attorney acts in role of party rather than role of attorney. In re Goffe, 641 A.2d 458, 1994 D.C. App. LEXIS 69 (1994).

— Neglect, grounds for discipline.

Client established that he could have succeeded on his age discrimination lawsuit, such that law firm's breach of a duty, in failing to respond to a deadline, was the proximate cause of client's loss of damages, thus supporting jury verdict for client in legal malpractice action against law firm; client established prima facie case of employment discrimination by testifying that his boss told him that he was too old for his job shortly before he was fired, and that his replacement was a younger man, and law firm took no steps to rebut client's prima facie case

by calling someone from former employer to challenge client's testimony or offer a neutral reason for his termination. *Martin v. Ross*, 6 A.3d 860, 2010 D.C. App. LEXIS 603 (2010).

Attorney's admitted misconduct while representing clients in criminal matters, in each case having failed to adequately communicate with his clients, provide competent representation, respond to court orders, or prosecute his clients' interests, warranted six-month suspension from practice of law with reinstatement conditioned upon showing of fitness to practice. *Martin v. Ross*, 6 A.3d 860, 2010 D.C. App. LEXIS 603 (2010).

Attorney's neglect of cases of three clients before United States District Court, his actions in misleading them and lying to them as to status of their cases, and his concealment from them of his suspension from practice amounted to failure to provide competent representation, failure to represent clients with diligence and zeal, failure to seek clients' lawful objectives, failure to communicate with clients, dishonesty, fraud, deceit or misrepresentation, conduct that seriously interfered with administration of justice, and failure to protect clients' interests following termination of relationship, in violation of rules of professional conduct. In re Schoeneman, 891 A.2d 279, 2006 D.C. App. LEXIS 19 (2006).

Attorney's misconduct as court-appointed guardian and conservator of client and client's estate warranted disbarment, stayed in favor of three years' monitored and conditional probation, where attorney established that she suffered from disability based on psychiatric disorders, addiction to prescription drugs, and alcoholism, and that her misconduct was substantially affected by her disability. In re Soininen, 889 A.2d 294, 2005 D.C. App. LEXIS 652 (2005).

Attorney's failure to make reasonable efforts to ensure that conduct of non-attorney employee was compatible with her own professional obligations, facilitating employee's embezzlement of client funds, warranted 90-day suspension from practice of law, consecutive to 90-day suspension imposed for failure to cooperate in three disciplinary investigations. In re Cater, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

Six-month suspension, with restitution to client and requirement of proving fitness to practice as condition of reinstatement, was appropriate disciplinary sanction for attorney's neglect of client's immigration case, in which client sought adjustment of immigration status following his marriage to United States citizen. In re Owusu, 886 A.2d 536, 2005 D.C. App. LEXIS 555 (2005).

One year suspension, with reinstatement conditioned on a showing of fitness and restitution, was appropriate sanction for attorney who

neglected client's matter by failing to file time-sensitive motion to seal client's arrest record after he agreed to do so, settled clients' personal injury claims without their knowledge or consent and otherwise failed to keep clients properly informed or abide by their decisions, failed to keep adequate records of source and disposition of funds in his client trust account, and intentionally harmed client by knowingly delivering an erroneously issued insurance check to the client without warning her against cashing it. In re Wright, 885 A.2d 315, 2005 D.C. App. LEXIS 528 (2005).

Public censure of attorney, followed by three years probation, was warranted, in attorney disciplinary case, where attorney was retained to probate an estate, he failed to properly complete a petition for probate, he did not complete the probate of estate within a four-year period, and he failed to withdraw from the case after acknowledging his incapacity. In re Bingham, 881 A.2d 619, 2005 D.C. App. LEXIS 460 (2005).

The imposition of a Board on Professional Responsibility reprimand, rather than an informal admonition, as suggested by attorney, fell within the range of acceptable outcomes, and thus was appropriate sanction for attorney's conduct in failing to file an appeal for an immigration client due to a dispute over attorney's fee. In re Schlemmer, 870 A.2d 76, 2005 D.C. App. LEXIS 54 (2005).

Attorney's misconduct, which included intentional neglect and dishonesty that caused five clients to lose their respective claims against former employers and two of those clients to suffer large default judgments, as well as proffering a fabricated subpoena to a judicial officer as justification for failing to appear in court, warranted a three-year suspension from the practice of law. In re Steele, 868 A.2d 146, 2005 D.C. App. LEXIS 30 (2005).

Suspension of eighteen months from practice of law, with reinstatement conditioned upon showing of fitness, rather than six-month suspension, was appropriate sanction for attorney's neglect, failure to keep his clients informed, and failure to protect a client's interest after representation ended, in violation of Rules of Professional Conduct; attorney mishandled client's settlement proceeds and dishonestly responded to disciplinary complaint, but there was lack of history of attorney's encounters with disciplinary system, he acknowledged his mistakes, and he voluntarily ceased practicing. In re Kitchings, 857 A.2d 1059, 2004 D.C. App. LEXIS 397 (2004).

Attorney's persistent failure to cooperate with Bar Counsel in the investigation of a complaint filed by former client, alleging that he neglected to perform contracted legal services, warranted public censure, rather than 30-day suspension with reinstatement contin-

gent on proof of rehabilitation and fitness to resume the practice of law. In *re Mabry*, 851 A.2d 1276, 2004 D.C. App. LEXIS 290 (2004).

Failure of attorney, who was partner in law firm, to exercise proper supervisory responsibility over actions by associate under his supervision violated rule of professional conduct setting forth responsibility of attorney for violation by another; disciplinary proceeding arose after attorney's law firm, which represented two individuals, took action favoring one client without notifying other client or safeguarding his interests, and although attorney did not have actual knowledge of misrepresentation, attorney reasonably should have been aware of associate's acts, and attorney was responsible for behavior under plain language of rule. In *re Cohen*, 847 A.2d 1162, 2004 D.C. App. LEXIS 194 (2004).

A 30-day suspension was warranted as reciprocal disciplinary sanction for attorney's misconduct in federal circuit court in failing to respond to a show cause order and explain why he should not have been disciplined on account of dilatory conduct in an appeal before that court while being admitted to appear *pro hac vice*. In *re Ellis*, 841 A.2d 1264, 2004 D.C. App. LEXIS 47 (2004).

Suspension for 90 days, with requirement of proof of fitness before reinstatement and with requirement that attorney make restitution to clients for unearned attorney fees, was appropriate disciplinary sanction for attorney's conduct in failing to keep two clients reasonably informed, return their telephone calls, and comply promptly with reasonable requests for information, failing to promptly return unearned fees when her representation of two clients was terminated, and failing to respond to Bar Counsel's and Board on Professional Responsibility's requests for information. In *re Hallmark*, 831 A.2d 366, 2003 D.C. App. LEXIS 541 (2003).

Sanction recommended by Board of Professional Responsibility against attorney was not inconsistent with discipline imposed in similar cases and was acceptable to Court of Appeals; attorney, among other things, failed to communicate with her client during pendency of his appeal, ignored Court's requests to contact client, did not inform client of, nor accepted, offer by co-defendant's counsel to join in motion for new trial, and failed to forward case file to client for more than two years after he complained, was suspended from practice of law for 30 days with stayed suspension, and was placed on probation for one year subject to supervision. In *re Baron*, 808 A.2d 497, 2002 D.C. App. LEXIS 560 (2002).

Evidence was sufficient to support finding that attorney failed to render accountings promptly to her condominium clients upon request, thus supporting imposition of disbar-

ment; although attorney attended meetings of the condominium association, and many of the written requests for accountings were addressed to her, she made no effort to see that they were rendered in a timely fashion until two of the condominium clients filed an ethical complaint against attorney and her partner. In *re Carlson*, 802 A.2d 341, 2002 D.C. App. LEXIS 369 (2002).

Attorney's failure to respond to Bar Counsel's inquiries, and to orders of the Board on Professional Responsibility directing a response, in three separate disciplinary investigations, coupled with prior discipline for same misconduct, warranted six-month suspension. In *re Mattingly*, 790 A.2d 579, 2002 D.C. App. LEXIS 24 (2002).

Attorney's failure to reopen case that client lost because trial court held that she had forged document did not constitute attorney neglect, even though client alleged that she paid attorney substantial retainer to investigate and reopen that case; attorney showed that he consulted with document experts, fingerprint expert, and private officer on client's behalf, but that he could not prove that client did not forge document, and Bar Counsel had previously concluded that attorney's decision not to file motion to reinstate case reflected his professional judgment, and that it would have been ethically improper for him to file such motion if he concluded that he lacked good-faith basis to do so. In *re Schoeneman*, 777 A.2d 259, 2001 D.C. App. LEXIS 147 (2001).

Attorney's failure to return client's telephone calls for three weeks did not constitute failure to keep client reasonably informed; client admitted that she and attorney spoke monthly, that attorney traveled to Baltimore to meet client, that client traveled to Virginia to meet attorney, and that attorney regularly informed her that he was continuing in his efforts to reopen her case and reach settlement with her party opponents, and monthly conversations were not *prima facie* unreasonable, given nature of matter—long-term, complex fraud investigation coupled with extended negotiations. In *re Schoeneman*, 777 A.2d 259, 2001 D.C. App. LEXIS 147 (2001).

An attorney need not communicate with a client as often as the client would like, as long as the attorney's conduct was reasonable under the circumstances. In *re Schoeneman*, 777 A.2d 259, 2001 D.C. App. LEXIS 147 (2001).

Neglect of two separate legal matters, including failure to file documents, failing to communicate with clients after receiving prepayment, and failing to notify clients of change of address, warrants a 60-day suspension from practice of law, when considered with failure to return unearned fees as promised, lack of contrition, and harm and aggravation caused to clients. Code of Prof.Resp., DR 6-101(A)(3);

D.C. Code 1981, § 11-2502. In re Santana, 583 A.2d 1011, 1990 D.C. App. LEXIS 309 (1990).

Pattern of carelessness and indifference to obligations to courts and to clients, together with failure to respond to Bar Counsel's inquiries and lack of showing of extraordinary circumstances, warrants suspension for one year with reinstatement conditioned on showing of fitness to practice law. Code of Prof.Resp., DR 1-102(A)(5), DR 6-101(A)(1, 3), DR 7-101(A)(1, 2), DR 9-103(B)(4); Bar Rule XI, § 9(g); D.C. Code 1981, § 11-2502. In re Tinsley, 582 A.2d 1192, 1990 D.C. App. LEXIS 292 (1990).

Attorney's failure to attend meetings and to supply information to superior court auditor-master, and failure to respond to bar counsel's inquiries regarding such failures, justified 180-day suspension and requirement that attorney prove his fitness to practice before reinstatement rather than public censure when viewed in light of significant record of prior discipline stemming from case in another state. Code of Prof.Resp., DR 1-102(A)(5). In re Greenspan, 578 A.2d 1156, 1990 D.C. App. LEXIS 182 (1990).

Filing petition for probate and related pleadings and causing notice of petition to be published after being retained by client to probate estate, then doing virtually nothing for three years, constitutes "neglect of a legal matter" and warrants 30-day suspension. Code of Prof.Resp., DR 6-101(A)(3). In re Dory, 552 A.2d 518, 1989 D.C. App. LEXIS 282 (1989).

Attorney's failure to withdraw from employment after discharge, bad-faith charging of clearly excessive fee under contingency agreement, and failure to deliver papers which client is entitled to receive constitutes professional misconduct and warrants 30-day suspension. Code of Prof.Resp., DR2-106(A), DR2-110(B)(4), DR9-103(B)(4). In re Waller, 524 A.2d 748, 1987 D.C. App. LEXIS 334 (1987).

When a lawyer has failed to exercise due diligence in defense of his client, he has violated his professional and ethical obligation to "act with competent and proper care in representing client" and may be subjected to disciplinary sanctions therefor. ABA Code of Professional Responsibility, EC6-1; DR6-101(A). *Monroe v. United States*, 389 A.2d 811, 1978 D.C. App. LEXIS 488 (1978), writ of certiorari denied by 439 U.S. 1006, 99 S. Ct. 621, 58 L. Ed. 2d 683, 1978 U.S. LEXIS 4162 (1978).

— Protection or loyalty to client, grounds for discipline.

Allegations by plaintiff that her sister's attorney, as principal of law firm, communicated to bank a number of false and deceptive statements regarding the plaintiff's lack of interest in jewelry held in safe deposit box with the objective of permitting sister to gain unilateral access to the safe deposit box, and therefore

accorded the sister the ability to wrongfully exercise dominion and control over jewelry held in the safe deposit box, which allegedly was owned by both plaintiff and the sister, stated claim against law firm for aiding and abetting conversion, under District of Columbia law. *Baker v. Gurfein*, 744 F.Supp.2d 311, 2010 U.S. Dist. LEXIS 109107 (2010).

The fidelity of an attorney to his client does not justify an attempt to evade the fair operation of the law, or to impede the administration of justice. *Ex parte Giberson*, 10 F.Cas. 305, 1835 U.S. App. LEXIS 297 (1835).

Where attorney was subjectively acting in good faith and was attempting to fully protect interests of his client, use of Chapter 13 plan to obtain delay afforded by automatic stay provision solely to seek refinancing of debtor's residence, with no intent to ever effectuate a Chapter 13 plan, did not warrant disciplinary action. In re Cunha, 1 B.R. 330, 1 B.R. 333, 1979 Bankr. LEXIS 737 (1981).

Evidence was sufficient to establish that attorney, who owned title company and practiced in real estate and probate law, violated rule of professional conduct requiring skill and care, when he undertook to represent borrower and initiated probate proceeding after it was discovered that borrower in transaction title company was contacted to close did not have title to property and that property instead belonged to unprobated estate of borrower's deceased mother-in-law; attorney filed facially defective renunciation forms for borrower's son and her deceased husband's brother, attorney provided inconsistent testimony regarding his decision to use forms, deputy registrar of titles denied advising attorney's legal assistant to use forms, attorney only attempted to probate deceased mother-in-law's estate and not deceased husband's estate, and attorney failed to properly advise borrower regarding the factual and legal issues in transferring title to her. In re Evans, 902 A.2d 56, 2006 D.C. App. LEXIS 201 (2006).

Attorney's conduct in obtaining loans totaling over \$27,000.00 from an elderly, uneducated client of very little means and then failing to reimburse client for the loans violated the professional rules since attorney engaged in prohibited conflicts of interest and engaged in dishonest conduct. In re Austin, 858 A.2d 969, 2004 D.C. App. LEXIS 432 (2004).

Suspension for 30 days was appropriate disciplinary sanction for attorney's failure to perform conflicts check before representing new client and failure to obtain written consents from the affected parties, or to withdraw, once he learned of the conflict. In re Butterfield, 851 A.2d 513, 2004 D.C. App. LEXIS 318 (2004).

Conduct of attorney, who was partner in law firm, in failing to exercise proper supervisory responsibility over actions by associate under his supervision, warranted suspension from

practice of law for 30 days; disciplinary proceeding arose after attorney's law firm, which represented two individuals, took action favoring one client without notifying other client or safeguarding his interests, and although attorney had practiced law for more than 30 years without discipline and cooperated with investigation, attorney conceded that he did not appropriately consult with his client, and did not utilize system of oversight over associates. In re Cohen, 847 A.2d 1162, 2004 D.C. App. LEXIS 194 (2004).

Attorney who represented clients in potential class action against shampoo manufacturer violated bar rule requiring that a lawyer keep client reasonably informed of the status of a matter by entering into a settlement under which manufacturer would pay attorney and co-counsel \$225,000 in return for dropping case and agreeing not to disclose to clients the fact and amount of that payment, and also by failing to disclose to clients that the settlement agreement was not a release of their claims. In re Hager, 812 A.2d 904, 2002 D.C. App. LEXIS 724 (2002).

Attorney who represented clients in potential class action against shampoo manufacturer violated bar rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation by entering into a settlement under which manufacturer would pay attorney and co-counsel \$225,000 in fees and expenses in return for their agreement not to disclose to clients the fact and amount of that payment and not to represent current or future clients on related claims against manufacturer; attorney's unsuccessful attempt to persuade manufacturer to disclose fee did not negate dishonest state of mind. In re Hager, 812 A.2d 904, 2002 D.C. App. LEXIS 724 (2002).

Attorney who represented clients in potential class action against shampoo manufacturer violated bar rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation by failing to inform clients that their claims were not released by a settlement agreement under which manufacturer would pay \$225,000 to attorney and co-counsel in return for their agreement not to represent current or future clients on similar claims against manufacturer and not to disclose fact and amount of settlement to clients. In re Hager, 812 A.2d 904, 2002 D.C. App. LEXIS 724 (2002).

Attorney's statement to client, that he did not represent her during settlement talks with shampoo manufacturer, violated bar rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation, where first sentence of contingent fee agreement in connection with potential class action against manufacturer stated that client was retaining attorney and co-counsel to perform enumerated legal services, and attorney also sent letter to client

clearly stating that he continued to represent her in would-be class action. In re Hager, 812 A.2d 904, 2002 D.C. App. LEXIS 724 (2002).

Attorney who represented clients in potential class action against shampoo manufacturer, and who entered into settlement under which clients would receive full purchase price refunds but would not release their claims, and attorney and co-counsel would be paid \$225,000 in fees and expenses in return for agreeing not to represent present or future clients on similar claims against manufacturer and not to disclose fact and amount of that payment to clients, violated bar rules requiring that a lawyer abide by client's decision regarding an offer of settlement. In re Hager, 812 A.2d 904, 2002 D.C. App. LEXIS 724 (2002).

Disciplinary rules requiring that a lawyer abide by a client's decision whether to accept an offer of settlement, and prohibiting a lawyer from entering a settlement that includes a restriction of lawyer's right to practice, envelop agreements at the outer fringes of what constitutes a "settlement." In re Hager, 812 A.2d 904, 2002 D.C. App. LEXIS 724 (2002).

Attorney violated disciplinary rule requiring that a lawyer take timely steps in terminating a representation to protect a client's interests, such as surrendering papers to which client is entitled, by entering settlement with shampoo manufacturer under which attorney and co-counsel would be paid \$225,000 in return for dropping case and agreeing, in part, not to reveal any information obtained as a result of attorney's work in relation to the litigation; fact that no clients were in fact denied their files after execution of settlement was not determinative. In re Hager, 812 A.2d 904, 2002 D.C. App. LEXIS 724 (2002).

Attorney engaged in misconduct by continuing to represent clients in potential class action against shampoo manufacturer while negotiating a secret fee agreement with manufacturer that violated multiple Rules of Professional Conduct. In re Hager, 812 A.2d 904, 2002 D.C. App. LEXIS 724 (2002).

One-year suspension was warranted for attorney who engaged in professional misconduct, while representing clients in potential class action against shampoo manufacturer, by entering settlement under manufacturer would make full refunds to clients and would pay attorney and co-counsel \$225,000 in fees and expenses if attorney and co-counsel agreed to drop case and not to disclose fact and amount of that payment to clients; while violations were serious and of a type that could cause serious public doubt about integrity of lawyers, there were mitigating circumstances including lack of a prior disciplinary record and attorney's extensive pro bono work. In re Hager, 812 A.2d 904, 2002 D.C. App. LEXIS 724 (2002).

Clients must be able to rely unquestioningly on the truthfulness of their counsel. In *re* Bernstein, 774 A.2d 309, 2001 D.C. App. LEXIS 125 (2001).

An attorney's concealment or suppression of a material fact from his client is as fraudulent as a positive direct misrepresentation. In *re* Bernstein, 774 A.2d 309, 2001 D.C. App. LEXIS 125 (2001).

Under Virginia disciplinary rule, attorney committed misconduct of revealing clients' secrets by stating, in support of motion to withdraw as counsel, that clients made misrepresentations to him and by attaching letter to motion revealing that a \$90,000 demand from opposing party would be reasonable. In *re* Gonzalez, 773 A.2d 1026, 2001 D.C. App. LEXIS 124 (2001).

An attorney owes a fiduciary duty to his client and must serve the client's interests with the utmost loyalty and devotion. In *re* Gonzalez, 773 A.2d 1026, 2001 D.C. App. LEXIS 124 (2001).

Informal admonition was appropriate sanction for attorney's misconduct, under Virginia disciplinary rule, of revealing clients' secrets in conjunction with motion to withdraw as counsel. In *re* Gonzalez, 773 A.2d 1026, 2001 D.C. App. LEXIS 124 (2001).

— Unauthorized practice, grounds for discipline.

Generally in cases involving unauthorized practice violations, a sanction as severe as disbarment or lengthy suspension has been imposed only when the unauthorized practice violation is accompanied by violations that would, in themselves, warrant those more severe sanctions. In *re* Lebowitz, 944 A.2d 444, 2008 D.C. App. LEXIS 94 (2008).

— Unreasonable fees, grounds for discipline.

Attorney's decision to increase the hours billed to two clients in order to charge a premium that he was not entitled to take under clients' engagement letters amounted to only negligent conduct, as opposed to reckless conduct, and thus, attorney's actions did not violate rule of professional conduct governing misconduct involving dishonesty, fraud, deceit, or misrepresentation; attorney's law firm had recently changed its billing policies to allow for premium charges, the bills at issue were sent out shortly after the firm adopted its new form engagement letter, two firm attorneys testified that these circumstances could have caused confusion, and attorney was responsible for an unusually large number of bills totaling millions of dollars. In *re* Romansky, 938 A.2d 733, 2007 D.C. App. LEXIS 691 (2007).

Rule of professional conduct regarding the charging of unreasonable attorney fees can be

violated by the act of charging an unreasonable fee without regard to whether the fee is collected. In *re* Cleaver-Bascombe, 892 A.2d 396, 2006 D.C. App. LEXIS 29 (2006).

In general.

The obligation which attorneys assume when they are admitted to the bar is not discharged by merely observing the rules of courteous demeanor in open court, but includes abstaining out of court from insulting language and offensive conduct towards the judges personally for their judicial acts. A threat of personal chastisement, made by an attorney to a judge out of court for his conduct during the trial of a cause pending, is good ground for striking off the attorney from the rolls of attorneys practicing in the court. *Bradley v. Fisher*, 80 U.S. 335, 1871 U.S. LEXIS 1345 (U.S. Dist. Col. 1871).

State courts, including courts of District of Columbia, possess exclusive authority to regulate admission to their respective state bars, and bear responsibility for disciplining errant bar members. *Doe v. Board on Professional Responsibility of District of Columbia Court of Appeals*, 717 F.2d 1424, 1983 U.S. App. LEXIS 16861 (C.A.D.C. 1983).

It is not by way of punishment that an offending attorney is disbarred; but the court, in such cases, exercises its discretion in determining whether a party whom it has admitted to the privilege of an attorney is a proper person to be continued on the roll. In *re* Adriaans, 17 App.D.C. 39, 1900 U.S. App. LEXIS 5327 (1900).

Under District of Columbia law, purpose in conducting attorney disciplinary proceedings and imposing sanctions is not to punish attorney, rather, it is to offer protection by assuring continued or restored fitness of attorney to practice law. *Nwachukwu v. Rooney*, 362 F.Supp.2d 183, 2005 U.S. Dist. LEXIS 3293 (2005).

For purposes of determining appropriateness of identical and reciprocal discipline in attorney disciplinary proceedings, New Jersey disciplinary proceedings against subject attorney did not result in miscarriage of justice, where state disciplinary authorities located and notified attorney of charges, and attorney participated in those disciplinary proceedings by speaking with investigator prior to his reprimand, and appearing for audit in connection with matter resulting in his disbarment. In *re* Gruber, 889 A.2d 991, 2005 D.C. App. LEXIS 649 (2005).

Attorney would not be ordered by Court of Appeals, in attorney disciplinary proceeding, to provide restitution to client by returning \$14,000 retainer client had paid attorney for representation in drug prosecution in which client entered guilty plea but later requested attorney's additional assistance in withdrawing plea; attorney provided substantial services to

client, and restitution determination was not possible because record included no billing records, affidavits, or other materials necessary for such determination and neither party had availed itself of opportunity to request from Board on Professional Responsibility a remand to hearing committee, upon showing of good cause, for further fact finding. In re Ponds, 888 A.2d 234, 2005 D.C. App. LEXIS 642 (2005).

Court of Appeals owes findings of ultimate fact and conclusions of law made by the Board on Professional Responsibility in attorney disciplinary proceedings no deference upon judicial review; its review is *de novo*. In re Cater, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

Purpose of imposing a sanction in attorney disciplinary proceedings is not to punish the attorney, but to protect the public and the courts, safeguard the integrity of the profession, and deter the respondent and other attorneys from engaging in similar misconduct. In re Cater, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

An attorney's character and fitness can be evaluated only by a disciplinary process that measures his or her behavior as a whole, not by separate inquiries into isolated instances of alleged misconduct. In re Wright, 885 A.2d 315, 2005 D.C. App. LEXIS 528 (2005).

In determining whether the provisions of bar rule governing attorney disciplinary proceedings apply, court looks to the substance of the bar's action, not to its label. In re Wright, 885 A.2d 315, 2005 D.C. App. LEXIS 528 (2005).

Only the Court of Appeals has the authority to discipline attorneys. In re Wright, 885 A.2d 315, 2005 D.C. App. LEXIS 528 (2005).

Factors used to determine the appropriate sanction in an attorney disciplinary proceeding include: (1) the seriousness of the conduct at issue; (2) the prejudice, if any, to the client which resulted from the conduct; (3) whether the conduct involved dishonesty and/or misrepresentation; (4) the presence or absence of violations of other provisions of the disciplinary rules; (5) whether the attorney had a previous disciplinary history; (6) whether or not the attorney acknowledged his or her wrongful conduct; and (7) circumstances in mitigation of the misconduct. In re Thyden, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Choice of sanction for attorney misconduct is not an exact science and depends on the facts and circumstances of each particular proceeding. In re Edwards, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

Disciplinary sanctions are a means of assuring the attorney's fitness to practice and for protecting the public from attorney misconduct. In re Edwards, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

The purpose of imposing discipline is to serve the public and professional interests identified

and to deter similar conduct in the future rather than to punish the attorney. In re Austin, 858 A.2d 969, 2004 D.C. App. LEXIS 432 (2004).

The imposition of sanction in bar discipline cases is not an exact science and may depend on the facts and circumstances of each particular proceeding. In re Austin, 858 A.2d 969, 2004 D.C. App. LEXIS 432 (2004).

An attorney's disciplinary record is considered in determining an appropriate sanction in a disciplinary matter; an attorney's disciplinary history is an important factor because it sheds considerable light on continued fitness. In re Bettis, 855 A.2d 282, 2004 D.C. App. LEXIS 415 (2004).

Attorney was not eligible to receive a *nunc pro tunc* disciplinary suspension to run from the date she filed an affidavit in which she disclosed her decision to suspend herself; attorney failed to comply with the notice requirements for attorneys who were suspended, bar records and the public were unaware that attorney was on a self-imposed suspension from the practice of law, attorney failed to establish that her circumstances were "unique" or compelled the allowance of *nunc pro tunc* suspension, and attorney's affidavits before the Board on Professional Responsibility were misleading and less than forthright concerning her unauthorized practice of law during suspension. In re Soininen, 853 A.2d 712, 2004 D.C. App. LEXIS 388 (2004).

When determining the consistency of attorney disciplinary sanctions between cases, it is necessary to compare the gravity and frequency of the misconduct, any prior discipline, and any mitigating factors such as cooperation with Bar Counsel, remorse, illness, or stress. In re Schlemmer, 840 A.2d 657, 2004 D.C. App. LEXIS 1 (2004).

Attorney's claim, in disciplinary proceedings, that he did not know the rule requiring deposit of client settlement funds in a separate trust account also applied to funds that were not owed to the client but to third-party medical providers, did not excuse or mitigate misconduct in commingling funds; if a failure to understand the most central Rules of Professional Conduct could be an acceptable defense for a charged violation, even in cases of good faith mistake, the public's confidence in the bar and, more importantly, the public's protection against lawyer overreaching would diminish considerably. In re Smith, 817 A.2d 196, 2003 D.C. App. LEXIS 87 (2003).

Attorney fees should not be assessed lightly or without fair notice and opportunity for hearing on record; attorney is entitled at least to meaningful opportunity to argue, either in open court or on paper, against imposition of any such sanctions against him. *Delacruz v. Harris*,

780 A.2d 262, 2001 D.C. App. LEXIS 195 (2001).

Public censure is an established sanction for conduct interfering with the administration of justice. *Delacruz v. Harris*, 780 A.2d 262, 2001 D.C. App. LEXIS 195 (2001).

Where an aggravating element of dishonesty is present, the sanction normally imposed for types of disciplinary violations, other than violations of the rule prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation, may be increased. *Delacruz v. Harris*, 780 A.2d 262, 2001 D.C. App. LEXIS 195 (2001).

Out-of-town actions of an active member of District of Columbia Bar are subject to review under the District's Rules on Professional Responsibility. In *re Bernstein*, 774 A.2d 309, 2001 D.C. App. LEXIS 125 (2001).

Attorney's due process rights were not violated by denial of his motion for second continuance of disciplinary hearing, which was subsequently held in his absence, despite his claim that medical condition precluded his attendance; after successfully avoiding service for several months, attorney requested and was granted continuance of first hearing date, disciplinary authorities made persistent efforts to provide attorney with opportunity to provide evidence of his claimed illness, which he failed to do, and he was able to travel to London within days of hearing. In *re Asher*, 772 A.2d 1161, 2001 D.C. App. LEXIS 117 (2001).

Proceedings to disbar an attorney are not intended for the purpose of punishment, but to protect the public from lawyers who engage in unethical conduct. In *re Asher*, 772 A.2d 1161, 2001 D.C. App. LEXIS 117 (2001).

Broad power of United States District Court for the District of Columbia to discipline errant members of the Bar which existed under United States District Court rules was carried forward, at time of creation of new disciplinary system, for conduct which occurred prior to creation of the system. D.C. Code Bar Rules, rule 10; U.S. Dist. Ct. Rules Dist. of Col. 1961, Civil Rules 94, 94(a, b); U.S. Dist. Ct. Rules Dist. of Col. Admission and Discipline of Attorneys Rule 4-3(c). In *re Keiler*, 380 A.2d 119, 1977 D.C. App. LEXIS 250 (1977).

Statute by which Congress conferred on District of Columbia Court of Appeals same authority over attorneys as had been accorded United States district court theretofore by statute regarding conduct prejudicial to administration of justice was essentially codification of inherent power of District of Columbia Court of Appeals acquired upon its designation by Congress as highest court of District of Columbia. D.C. Code §§ 11-102, 11-2102, 11-2502. In *re Keiler*, 380 A.2d 119, 1977 D.C. App. LEXIS 250 (1977).

Judgmental immunity.

Decision by law firm, retained by client as appellate counsel in underlying patent in-

fringement action against client in federal court, not to raise a claim, in client's initial appeal in underlying action, of constitutional excessiveness of award of punitive damages against client, which was three times the award of compensatory damages, was a reasonable professional judgment, and thus, under judgmental immunity doctrine, law firm was not liable to client for legal malpractice, relating to waiver of client's right to challenge punitive damages award, as being constitutionally excessive, when, on remand after initial appeal, trial court considerably reduced award of compensatory damages, resulting in ratio of 38,000 to 1 between punitive damages and reduced award of compensatory damages; before appellate court's ruling in appeal by client following remand, the law had been unsettled in the federal circuit regarding whether the constitutional challenge would be waived on remand if not raised in initial appeal, and at time of initial appeal, a fair reading of existing Supreme Court precedent would have been that a ratio of ten-to-one between punitive and compensatory damages would not be constitutionally excessive. *Biomet Inc. v. Finnegan Henderson LLP*, 967 A.2d 662, 2009 D.C. App. LEXIS 49 (2009).

Law applicable.

A failure to respond to Bar Counsel's investigation, combined with a failure to comply with a Board on Professional Responsibility order, qualifies as a violation of professional conduct rule prohibiting an attorney from interfering with the administration of justice. In *re Spitzer*, 845 A.2d 1137, 2004 D.C. App. LEXIS 76 (2004).

Any error by Board on Professional Responsibility in applying District of Columbia Rules of Professional Conduct, rather than Virginia rules, during disciplinary proceeding against attorney who was member of District of Columbia bar that arose from his conduct while representing client in Virginia, was harmless, where application of Virginia rules would not have been more favorable to attorney. In *re Bernstein*, 774 A.2d 309, 2001 D.C. App. LEXIS 125 (2001).

Virginia's disciplinary rules applied to attorney discipline case in which the charged misconduct of revealing clients' secrets occurred in connection with a proceeding in that state, where attorney was counsel of record in the proceeding and was a member of the Virginia bar. In *re Gonzalez*, 773 A.2d 1026, 2001 D.C. App. LEXIS 124 (2001).

Mitigating factors.

In attorney discipline proceeding for attorney who submitted altered checks to trial court in child support hearing and made false statements to court, sufficient mitigating factors, including attorney's depression and genuine

remorse for his actions, the lack of any prior disciplinary actions, his public service for close to twenty years as an Assistant United States Attorney, and the aberrant nature of the misconduct, warranted a reduction in suspension period imposed on attorney. *In re Mayers*, 943 A.2d 1170, 2008 D.C. App. LEXIS 102 (2008).

Maryland's standard for mitigation of attorney discipline based on an attorney's disability, which requires proof of a lawyer's "utter inability to conform his or her conduct" to the rules of professional conduct, in addition to a showing of nothing less than "the most serious and utterly debilitating mental or physical health conditions, arising from any source that is the "root cause" of the misconduct," is substantially different, and not merely somewhat different, from the District of Columbia's standard, which requires the attorney to show: (1) by clear and convincing evidence that he had a disability; (2) by a preponderance of the evidence that the disability substantially affected his misconduct; and (3) by clear and convincing evidence that he has been substantially rehabilitated, for purposes of reciprocal discipline analysis; the Maryland standard sets a substantially higher bar and will require an unmitigated sanction in some cases in which, in the District's jurisdiction, a mitigated sanction would be warranted. *In re Zakroff*, 934 A.2d 409, 2007 D.C. App. LEXIS 643 (2007).

The occurrence of attorney's ethical violations in a personal context outside his usual practice as assistant general counsel at the Department of Consumer and Regulatory Affairs was a mitigating, rather than an aggravating, factor in determining what discipline to impose on attorney who incompetently represented interests of client, who was aged family friend, and engaged in a conflict of interest without full disclosure when he drafted her will; attorney's foray into estate planning represented a one-shot event of a personal nature. *In re Long*, 902 A.2d 1168, 2006 D.C. App. LEXIS 416 (2006).

Negotiated attorney discipline.

Court of Appeals would approve petition for negotiated attorney discipline, under which attorney agreed to 30-day suspension and that his conduct, in accepting \$55,000 in funds from a foreign nation's government and subsequently using that money for the benefit of the nation's former ambassador after government had changed and ambassador had turned in his diplomatic credentials, violated rule requiring him to safeguard and hold in trust funds which he held at a time that a dispute arose among persons claiming an interest in them. *In re Johnson*, 984 A.2d 176, 2009 D.C. App. LEXIS 599 (2009).

Practice and procedure.

Witness was qualified to testify as an expert on the legal standard of care in client's legal

malpractice action against law firm after the firm's failure to respond to a deadline resulted in the dismissal of client's employment discrimination case; witness had been a licensed attorney in the District of Columbia for twenty years and had operated his own law firm for over fifteen years, and witness estimated that he had worked on hundreds of employment discrimination cases. *Martin v. Ross*, 6 A.3d 860, 2010 D.C. App. LEXIS 603 (2010).

Specification of charges against attorney in attorney discipline proceeding gave attorney sufficient notice that he was being charged with theft and misappropriation of a client check, even if the specification alleged that forgery had been the method attorney used to accomplish the misappropriation. *In re Mitrano*, 952 A.2d 901, 2008 D.C. App. LEXIS 297 (2008), writ of certiorari denied by 556 U.S. 1209, 129 S. Ct. 2064, 173 L. Ed. 2d 1134, 2009 U.S. LEXIS 3132, 77 U.S.L.W. 3594 (2009).

Five-year delay in attorney disciplinary proceeding, which was largely attributable to hearing committee's taking more than three years to issue its report, did not warrant mitigation of disciplinary sanction by staying the execution of attorney's suspension during period of unsupervised probation; stay would effectively result in no suspension at all, and attorney did not assert that the delay prejudiced him. *In re Ponds*, 888 A.2d 234, 2005 D.C. App. LEXIS 642 (2005).

Single affidavit from process server, stating that individuals, including a family member of attorney, present at various addresses at which service of notice of attorney investigative inquiry was attempted had not been forthcoming as to attorney's whereabouts did not constitute clear and convincing evidence that attorney had deliberately evaded knowledge of the inquiry. *In re Owusu*, 886 A.2d 536, 2005 D.C. App. LEXIS 555 (2005).

Attorney in attorney discipline proceedings had Fifth Amendment right to refuse to answer Bar Counsel's interrogatories to explain actions that Auditor-Master had described as "a fraudulent conveyance," given that fraudulent conduct could give rise to criminal liability. *In re Artis*, 883 A.2d 85, 2005 D.C. App. LEXIS 473 (2005).

Bar Counsel's interrogatories in attorney discipline proceedings, requesting attorney "to explain in detail" his conduct in light of disciplinary rules, were overly broad, vague, burdensome and improperly called for legal conclusions; inquiries requested information that could be readily obtained from documents covered in Bar Counsel's subpoena duces tecum, and attorney had already interposed a general denial of misconduct. *In re Artis*, 883 A.2d 85, 2005 D.C. App. LEXIS 473 (2005).

Discovery by means of Bar Counsel's written inquiries of attorney in attorney discipline pro-

ceedings are subject to the limitation of reasonableness under the circumstances. In re Artis, 883 A.2d 85, 2005 D.C. App. LEXIS 473 (2005).

Interrogatories, as provided for under civil court rules, should not be incorporated into attorney disciplinary process without promulgation of rules governing their use. In re Artis, 883 A.2d 85, 2005 D.C. App. LEXIS 473 (2005).

Any error in procedures followed by hearing committee in hearing mitigating evidence in attorney disciplinary proceeding did not provide legitimate ground for dismissal of complaint, where attorney failed to raise claim with respect thereto before Board on Professional Responsibility and failed to demonstrate prejudice resulting therefrom. In re Thyden, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Replacement of committee member in attorney disciplinary proceedings, immediately before commencement of hearing, did not implicate due process concerns and did not provide legitimate ground for dismissal of complaint, despite attorney's contention that he was unable to make reasonable inquiry about or challenge new member, where attorney did not object to new committee member's participation when it was announced or at any time during hearing, did not raise issue before Board on Professional Responsibility, led committee chair to believe that he did not object to new committee member, and did not contend before Court of Appeals that he was, in fact, prejudiced by replacement of committee member. In re Thyden, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Where an attorney's ability to present a defense in attorney disciplinary proceedings has not been impaired by delay in such proceedings, and in the absence of other specific prejudice, the serious nature of the violations requires that the public interest in regulating members of the bar take precedence over the attorney's preference, no matter how understandable, to be relieved of the burden of anxiety and uncertainty inherent in every disciplinary proceeding. In re Thyden, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Any excessive delay in conclusion of attorney disciplinary proceedings did not provide legitimate ground for dismissal of complaint, where attorney failed to argue any prejudice until proceedings in Court of Appeals on Board on Professional Responsibility's report and recommendation, witness alleged by attorney to have been rendered unable to testify by reason of delay did not testify in proceedings before Board and parties agreed that witness did not need to appear, witness' testimony would have related primarily to charge of which attorney was exonerated, and attorney was free to practice law during pendency of proceedings. In re Thyden, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Notwithstanding that bar discipline does not result in criminal conviction, an attorney who is the subject of such proceedings is entitled to procedural due process safeguards; the procedural requirements which apply in attorney disciplinary proceedings are analogous to those of other contested cases. In re Thyden, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Attorney did not establish that hearing committee's three year delay in issuing a decision in disciplinary action created sufficient bias to warrant a finding of a constitutional due process violation; there was nothing in the record upon which any reasonable person could conclude that the members of the committee were biased against attorney or were trying to cover up for any misconduct on their part by ruling against attorney. In re Shepherd, 870 A.2d 67, 2005 D.C. App. LEXIS 41 (2005).

Attorney did not establish that hearing committee's three-year delay in issuing its report in disciplinary action created bias on the part of the committee to rule against attorney so as to deflect attention away from its own alleged neglect; there was nothing in the record upon which any reasonable person could conclude that the members of the committee were biased against attorney or were trying to cover up for any misconduct on their part by ruling against attorney. In re Shepherd, 870 A.2d 67, 2005 D.C. App. LEXIS 41 (2005).

Attorney disciplinary proceedings were properly had before ad hoc hearing committee, where convening of such committee was required to ensure that disciplinary process operated without undue delay. In re Douglass, 859 A.2d 1069, 2004 D.C. App. LEXIS 520 (2004).

Hearing committee did not abuse its discretion in denying attorney's motion to take deposition of former client, in attorney disciplinary proceedings, where attorney did not establish compelling need for such discovery within meaning of applicable rule. In re Douglass, 859 A.2d 1069, 2004 D.C. App. LEXIS 520 (2004).

Delay in concluding attorney disciplinary proceeding did not prejudice attorney materially or justify reduction of his sanction beyond consideration that recommendation of Board on Professional Responsibility already evidenced. In re Starnes, 829 A.2d 488, 2003 D.C. App. LEXIS 483 (2003).

Attorney was deemed to have notice of reciprocal disbarment proceedings, where attorney acknowledged that he received complaint and was aware of proceedings against him in Maryland, attorney failed to report his disbarment to Bar Counsel in the District of Columbia, and failed to update his address with District of Columbia's bar. In re McGowan, 827 A.2d 31, 2003 D.C. App. LEXIS 301 (2003).

Attorney's failure to respond to notices of reciprocal disciplinary proceedings would be treated as failure to respond after having had

notice, where proceedings were based upon attorney's receipt of public censure in another jurisdiction, of which he failed to inform Board on Professional Responsibility, and where notices were returned due to attorney's failure to update his address on file with the bar. In *re Smith*, 812 A.2d 931, 2002 D.C. App. LEXIS 743 (2002).

Attorney received sufficient notice in disciplinary proceeding that hearing committee would consider, as an ethical violation, his failure to disclose to clients in potential class action against shampoo manufacturer that they had a continuing right to sue under settlement agreement that attorney and co-counsel reached with manufacturer; while amended specification of charges did not specifically mention the continuing right to sue, it sufficiently alerted attorney that entire settlement agreement would be subject to scrutiny for ethical violations. In *re Smith*, 812 A.2d 931, 2002 D.C. App. LEXIS 743 (2002).

Consolidation of attorney's disciplinary case with that of managing partner of her firm did not violate attorney's right to due process, where cases arose out of attorney's and partner's representation of their condominium clients, there was no indication that attorney would be prejudiced by the joinder, partner never appeared at the hearing, and Board on Professional Responsibility modified hearing committee's factual findings, as necessary, to distinguish attorney's behavior from that of the partner's. In *re Carlson*, 802 A.2d 341, 2002 D.C. App. LEXIS 369 (2002).

An attorney has a right to procedural due process in a disciplinary procedure; due process is afforded when the disciplinary proceeding provides adequate notice of the charges of misconduct and a meaningful opportunity to be heard. In *re Maxwell*, 798 A.2d 525, 2002 D.C. App. LEXIS 110 (2002).

Alleged misapprehension by federal appellate court's grievance committee, that federal district court judge had sanctioned attorney, in case involving same parties and issues as case in which attorney's misconduct occurred, for his repeated failure to follow court rules and deadlines rather than for his conduct at deposition, did not warrant evidentiary hearing in District of Columbia reciprocal discipline proceeding; attorney had raised and argued before the federal appellate court the committee's alleged misapprehension. In *re Balsamo*, 780 A.2d 255, 2001 D.C. App. LEXIS 190 (2001).

Bar Counsel's resolution of three-count and subsequent 12-count disciplinary complaints, based on stipulated facts, was not a "dismissal" of the 12-count complaint that was allegedly beyond Bar Counsel's authority; Bar Counsel presented all 15 counts to hearing committee, Board on Professional Responsibility, and Court of Appeals and included them in recom-

mended sanction, memorandum of understanding provided that if any counts were not taken into account in the sanction imposed, then Bar Counsel retained authority to prosecute them separately, and memorandum of understanding made clear that all 15 charges could be raised if attorney were to petition for reinstatement after the recommended six-month suspension. In *re Kitchings*, 779 A.2d 926, 2001 D.C. App. LEXIS 188 (2001).

Resolution of three-count and subsequent 12-count disciplinary complaints by Bar Counsel, based on stipulated facts, was not a "plea bargain" that was allegedly beyond Bar Counsel's authority; memorandum of understanding did not state what Bar Counsel was promising in exchange for attorney's stipulation to misconduct in the 12 counts, apart from providing that if the 12 counts were not considered in aggravation of sanction for the first three counts, then Bar Counsel could "prosecute" them, attorney was given no form of leniency, because Bar Counsel recommended a sanction that it deemed "appropriate" for all 15 violations, and purpose of memorandum was to allow attorney to avoid cost of litigation, rather than to reduce the disciplinary sanction. In *re Kitchings*, 779 A.2d 926, 2001 D.C. App. LEXIS 188 (2001).

Although, as the quasi-independent prosecutorial arm of the court, Bar Counsel is not technically an "agency," Bar Counsel, like an agency, is bound to follow its own rules and regulations. In *re Kitchings*, 779 A.2d 926, 2001 D.C. App. LEXIS 188 (2001).

The Board on Professional Responsibility is obliged to accept the hearing committee's factual findings if those findings are supported by substantial evidence in the record, viewed as a whole. In *re Kitchings*, 779 A.2d 926, 2001 D.C. App. LEXIS 188 (2001).

Presumptions and burden of proof.

Under District of Columbia law, bar counsel's dismissal of client's complaint about her attorney did not have preclusive effect in client's subsequent action against attorney for legal malpractice and breach of fiduciary duty; bar counsel had to find clear and convincing evidence of violation of rules of professional conduct in order to sustain disciplinary proceeding, but client only needed to establish her claims by preponderance of evidence. *Hickey v. Scott*, 738 F.Supp.2d 55, 2010 U.S. Dist. LEXIS 96949 (2010).

There is a rebuttable presumption that the sanction imposed by the Court of Appeals in a reciprocal discipline case will be identical to that imposed by the original disciplining court; this presumption is rebutted only if the respondent demonstrates, or the face of the record reveals, by clear and convincing evidence the existence an exception to the imposition of

reciprocal discipline. In *re Beattie*, 956 A.2d 84, 2008 D.C. App. LEXIS 384 (2008).

Bar rule governing reciprocal attorney discipline creates a rebuttable presumption that the discipline will be the same in the District of Columbia as it was in the original jurisdiction. In *re Ditton*, 954 A.2d 986, 2008 D.C. App. LEXIS 370 (2008).

In an attorney disciplinary proceeding in which reciprocal discipline is recommended, a rebuttable presumption exists that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In *re Sawyer*, 953 A.2d 1019, 2008 D.C. App. LEXIS 288 (2008).

Misappropriation of client funds is essentially a *per se* offense, and proof of improper intent is not required in a disciplinary proceeding. In *re Cloud*, 939 A.2d 653, 2007 D.C. App. LEXIS 841 (2007).

Bar Counsel must prove misappropriation by clear and convincing evidence. In *re Cloud*, 939 A.2d 653, 2007 D.C. App. LEXIS 841 (2007).

In a reciprocal attorney-discipline proceeding, a rebuttable presumption exists that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In *re Richardson*, 935 A.2d 1076, 2007 D.C. App. LEXIS 657 (2007).

A rebuttable presumption exists, with respect to reciprocal discipline of an attorney, that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In *re Zdravkovich*, 891 A.2d 258, 2006 D.C. App. LEXIS 23 (2006).

By failing to file any exceptions to the report and recommendation of the Board on Professional Responsibility in reciprocal disciplinary action, attorney effectively conceded that the proposed sanction was appropriate. In *re Parshall*, 878 A.2d 1253, 2005 D.C. App. LEXIS 388 (2005).

Burden of proving attorney disciplinary charges rests with Bar Counsel, and factual findings must be supported by clear and convincing evidence. In *re Thyden*, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

An attorney is presumed to know the ethical rules governing his behavior, and ignorance neither excuses nor mitigates a violation. In *re Devaney*, 870 A.2d 53, 2005 D.C. App. LEXIS 43 (2005).

Disbarred attorney who did not participate in reciprocal discipline proceedings or except to the recommendation of disbarment did not rebut the presumption in favor of identical reciprocal discipline. In *re Zackey*, 838 A.2d 313, 2003 D.C. App. LEXIS 710 (2003).

There is a rebuttable presumption that reciprocal discipline will be the same as in the originating jurisdiction. In *re Zackey*, 838 A.2d 313, 2003 D.C. App. LEXIS 710 (2003).

There is a rebuttable presumption that the sanction imposed in a reciprocal discipline case will be identical to that imposed by the original disciplining court; the presumption is rebutted only if the respondent demonstrates, or the face of the record reveals, by clear and convincing evidence the existence of a condition enumerated in Bar Rule for not imposing reciprocal discipline. In *re Ain*, 837 A.2d 908, 2003 D.C. App. LEXIS 698 (2003).

The presumption that the sanction imposed in a reciprocal discipline case will be identical to that imposed by the original disciplining court can be rebutted only if the attorney demonstrates, or the face of the record reveals, by clear and convincing evidence, that: (1) the procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (2) there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court of Appeals could not, consistently with its duty, accept as final the conclusion on that subject; (3) the imposition of the same discipline would result in grave injustice; (4) the misconduct warrants substantially different discipline in the District of Columbia; or (5) The misconduct elsewhere does not constitute misconduct in the District of Columbia. In *re Dunietz*, 832 A.2d 161, 2003 D.C. App. LEXIS 564 (2003).

Requirement that suspended attorney demonstrate his fitness to practice law before being readmitted was appropriate in view of concerns regarding his honesty, competence, trustworthiness and professional responsibility raised by his unremedied ethical and rule violations. In *re Starnes*, 829 A.2d 488, 2003 D.C. App. LEXIS 483 (2003).

While an intent to defraud or deceive may be required for a finding of fraud, dishonesty may result from conduct evincing a lack of honesty, probity or integrity in principle, for purposes of ethics rule, precluding attorneys from engaging in acts of dishonesty, fraud, deceit or misrepresentation. In *re Romansky*, 825 A.2d 311, 2003 D.C. App. LEXIS 305 (2003).

When examining whether an attorney's actions were dishonest, court's take as a given that, for disciplinary purposes, dishonesty does not always depend on a finding of intent to defraud or deceive, for purposes of violation of ethics rule, precluding attorneys from engaging in acts of dishonesty, fraud, deceit or misrepresentation. In *re Romansky*, 825 A.2d 311, 2003 D.C. App. LEXIS 305 (2003).

When attorney's allegedly dishonest act itself is not of a kind that is clearly wrongful, or not intentional, Bar Counsel has the additional burden of showing the requisite dishonest intent, for purposes of proving violation of ethics rule, precluding attorneys from engaging in acts of dishonesty, fraud, deceit or misrepresentation.

tation. In re Romansky, 825 A.2d 311, 2003 D.C. App. LEXIS 305 (2003).

Recommendation and Report of Board on Professional Responsibility in attorney disciplinary proceeding comes to Court of Appeals with strong presumption in favor of its correctness, and attorney bears a heavy burden to successfully establish claimed exceptions. In re Hager, 812 A.2d 904, 2002 D.C. App. LEXIS 724 (2002).

Probation.

Disbarment, with such disbarment to be stayed, and placement of attorney on probation for three years was appropriate sanction for attorney's misconduct, which included misappropriation of client funds, failure to maintain complete records, render appropriate accounts, or notify client of receipt of funds, and failure to return any prepaid unearned fees to client until 13 years after representation ended, as attorney's alcohol addiction was substantial cause of his misconduct, and he was substantially rehabilitated. In re Brown, 912 A.2d 568, 2006 D.C. App. LEXIS 638 (2006).

Reciprocal discipline.

Attorney did not have due process right, in Florida attorney disciplinary proceedings, to subpoena judges who presided over his child support contempt proceedings and who sanctioned him for vexatious and meritless litigation, and therefore, suspension from practice of law for three years did not violate due process, as grounds for rebutting presumption in favor of reciprocal discipline in District of Columbia. In re Sibley, 990 A.2d 483, 2010 D.C. App. LEXIS 89 (2010), writ of certiorari dismissed by 131 S. Ct. 253, 178 L. Ed. 2d 7, 2010 U.S. LEXIS 7763, 79 U.S.L.W. 3207 (U.S. 2010), dismissed by 786 F. Supp. 2d 338, 2011 U.S. Dist. LEXIS 54452 (D.D.C. 2011).

Attorney did not have Sixth Amendment right of confrontation in attorney disciplinary proceedings in Florida, and therefore, suspension from practice of law in Florida for three years did not violate due process, as grounds for rebutting presumption in favor of reciprocal discipline in District of Columbia. In re Sibley, 990 A.2d 483, 2010 D.C. App. LEXIS 89 (2010), writ of certiorari dismissed by 131 S. Ct. 253, 178 L. Ed. 2d 7, 2010 U.S. LEXIS 7763, 79 U.S.L.W. 3207 (U.S. 2010), dismissed by 786 F. Supp. 2d 338, 2011 U.S. Dist. LEXIS 54452 (D.D.C. 2011).

Evidence presented before Florida referee in attorney disciplinary proceedings was sufficient to show that attorney's numerous lawsuits and appeals were frivolous, resulting in imposition of sanctions, and therefore, attorney disciplinary proceedings that resulted in suspension from practice of law for three years did not violate due process, as grounds for rebut-

ting presumption in favor of reciprocal discipline in District of Columbia; district court found that lawsuits and appeals were without merit and abuse of legal process, and entered order barring attorney from further self-representation to prevent filing of frivolous petitions. In re Sibley, 990 A.2d 483, 2010 D.C. App. LEXIS 89 (2010), writ of certiorari dismissed by 131 S. Ct. 253, 178 L. Ed. 2d 7, 2010 U.S. LEXIS 7763, 79 U.S.L.W. 3207 (U.S. 2010), dismissed by 786 F. Supp. 2d 338, 2011 U.S. Dist. LEXIS 54452 (D.D.C. 2011).

Attorney did not have due process right, in Florida attorney disciplinary proceedings, to subpoena judges who presided over his child support contempt proceedings and who sanctioned him for vexatious and meritless litigation, and therefore, suspension from practice of law for three years did not violate due process, as grounds for rebutting presumption in favor of reciprocal discipline in District of Columbia. In re Sibley, 990 A.2d 483, 2010 D.C. App. LEXIS 89 (2010), writ of certiorari dismissed by 131 S. Ct. 253, 178 L. Ed. 2d 7, 2010 U.S. LEXIS 7763, 79 U.S.L.W. 3207 (U.S. 2010), dismissed by 786 F. Supp. 2d 338, 2011 U.S. Dist. LEXIS 54452 (D.D.C. 2011).

Attorney did not have Sixth Amendment right of confrontation in attorney disciplinary proceedings in Florida, and therefore, suspension from practice of law in Florida for three years did not violate due process, as grounds for rebutting presumption in favor of reciprocal discipline in District of Columbia. In re Sibley, 990 A.2d 483, 2010 D.C. App. LEXIS 89 (2010), writ of certiorari dismissed by 131 S. Ct. 253, 178 L. Ed. 2d 7, 2010 U.S. LEXIS 7763, 79 U.S.L.W. 3207 (U.S. 2010), dismissed by 786 F. Supp. 2d 338, 2011 U.S. Dist. LEXIS 54452 (D.D.C. 2011).

Attorney's indefinite suspension from practice of law in another jurisdiction for professional rule violations involving competence, commingling and misappropriation, disbursing client funds, and interfering with administration of justice warranted indefinite suspension from practice of law in District of Columbia as reciprocal discipline. In re Maignan, 988 A.2d 493, 2010 D.C. App. LEXIS 29 (2010).

When a member of the District of Columbia Bar has been disbarred, suspended, or placed on probation by another disciplining court, the rule governing reciprocal discipline creates a rebuttable presumption that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In re Gonzalez, 967 A.2d 658, 2009 D.C. App. LEXIS 48 (2009).

Ninety-day suspension from practice of law, with reinstatement conditioned on proof of rehabilitation, was warranted for attorney who was suspended for three months in New Jersey and required to apply for reinstatement in New

Jersey by filing petition establishing fitness to resume practice, even though attorney was summarily reinstated in New Jersey, where attorney failed to show that any of the exceptions to rule requiring identical reciprocal discipline applied. In re Gonzalez, 967 A.2d 658, 2009 D.C. App. LEXIS 48 (2009).

Imposition of identical reciprocal discipline, a six-month suspension followed by a three-year period of unsupervised probation, subject to conditions imposed by Virginia court, was warranted for attorney who was subject to discipline in Virginia stemming from representing a client in an employment discrimination matter; Board on Professional Responsibility recommended reciprocal discipline, attorney consented to the discipline, case did not present any basis to reduce the recommended sanction, and Board's recommendation was to be given heightened deference since no exceptions were filed. In re Beattie, 956 A.2d 84, 2008 D.C. App. LEXIS 384 (2008).

Attorney's three-year suspension in Delaware for concealment of failure to pay taxes and failure to provide competent client representation warranted imposition of reciprocal discipline in District of Columbia of three years' suspension with requirement of demonstration of fitness prior to reinstatement, where no enumerated exception to reciprocal discipline applied. In re Ayres-Fountain, 955 A.2d 157, 2008 D.C. App. LEXIS 365 (2008).

Attorney's misconduct in Maryland, including calling a member of his staff to testify under oath in collection action under name of client's corporate representative, warranted imposition of identical reciprocal discipline of disbarment, where attorney failed to rebut presumption favoring identical reciprocal discipline or to file exceptions to recommendation of Board on Professional Responsibility, and sanction of disbarment was not inconsistent with discipline imposed for similar misconduct in the District of Columbia. In re Ayres-Fountain, 955 A.2d 157, 2008 D.C. App. LEXIS 365 (2008).

Six-month suspension from practice of law in District of Columbia, with reinstatement requirement, was appropriate reciprocal sanction for attorney's misconduct in New Jersey in violation of New Jersey Rules of Professional Conduct that resulted in six-month suspension there. In re Ayres-Fountain, 955 A.2d 157, 2008 D.C. App. LEXIS 365 (2008).

Proceedings in Montana in which attorney was denied admission to bar of that state did not provide a basis for imposing either reciprocal or original discipline; even though the opinion of Supreme Court of Montana raised questions about attorney's fitness for the practice of law, consideration of such proceedings would give preclusive effect to factual findings made in a non-disciplinary proceeding, and neither Board on Professional Responsibility nor a

hearing committee made independent findings by clear and convincing evidence related to attorney's mental and emotional fitness. In re Ditton, 954 A.2d 986, 2008 D.C. App. LEXIS 370 (2008).

Where the Board on Professional Responsibility recommends reciprocal attorney discipline, identical discipline should be imposed unless the attorney demonstrates, or the court finds on the face of the record, by clear and convincing evidence, one of the five exceptions. In re Ditton, 954 A.2d 986, 2008 D.C. App. LEXIS 370 (2008).

Disbarment was warranted as reciprocal discipline in District of Columbia, after attorney was disbarred in Delaware for either admitting or having been found to have repeatedly failed his fiduciary and financial obligations, repeatedly misappropriating client funds, falsifying records, and failing to file tax returns for several years. In re Ditton, 954 A.2d 986, 2008 D.C. App. LEXIS 370 (2008).

Disbarment was warranted as reciprocal discipline in District of Columbia, after attorney was disbarred in Maryland for commingling funds and misusing trust account funds. In re Turnbo, 953 A.2d 1026, 2008 D.C. App. LEXIS 325 (2008).

Where no exceptions to the Board on Professional Responsibility's recommendation for reciprocal discipline have been noted, the Court of Appeals reviews a foreign disciplinary proceeding to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline. In re Turnbo, 953 A.2d 1026, 2008 D.C. App. LEXIS 325 (2008).

Disbarment was warranted as reciprocal discipline in District of Columbia, after attorney was disbarred in Maryland for serious and protracted acts of neglect and was dishonest with clients, opposing counsel, and tribunals during his representation of two clients in separate probate and bankruptcy matters. In re Turnbo, 953 A.2d 1026, 2008 D.C. App. LEXIS 325 (2008).

In an attorney disciplinary proceeding, where no exception has been taken to the report and recommendation of the Board on Professional Responsibility, the Court of Appeals gives heightened deference to its recommendation. In re Feigenbaum, 951 A.2d 754, 2008 D.C. App. LEXIS 273 (2008).

Where neither Bar Counsel nor the attorney opposes identical discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline, a situation that the Court anticipates would rarely, if ever, present itself. In re Feigenbaum, 951 A.2d 754, 2008 D.C. App. LEXIS 273 (2008).

No obvious miscarriage of justice resulted from imposition on attorney of reciprocal discipline of five-year suspension from practice of law with a fitness condition for reinstatement, after attorney resigned from bar of another state, as record supported conclusion that attorney had actual knowledge of other state's proceedings against him, in that the notice of disciplinary charges and motion for default were mailed to address that attorney provided and those mailings were not returned, attorney received sufficient notice of reciprocal disciplinary proceeding, in that notice was mailed to his preferred address of record, and five-year suspension with fitness condition was identical to a resignation from other state's bar. In re Feigenbaum, 951 A.2d 754, 2008 D.C. App. LEXIS 273 (2008).

In a reciprocal attorney discipline case, unless the exceptions in Bar Rule apply regarding lack of due process, infirmity of proof establishing misconduct, or that the misconduct elsewhere did not constitute misconduct in the District of Columbia, reciprocal discipline is not to be based upon an independent evaluation of the evidence to find violations that the disciplining court did not find. In re Reed, 950 A.2d 35, 2008 D.C. App. LEXIS 258 (2008).

Disbarment from practice of law was appropriate reciprocal discipline after attorney was disbarred from practice of law in Pennsylvania following convictions for felony sexual abuse of children, dissemination of obscenity to minors, criminal use of communication facility, and possessing instruments of crime. In re Wright, 949 A.2d 583, 2008 D.C. App. LEXIS 256 (2008).

Disbarment was appropriate reciprocal discipline for attorney's misconduct of misrepresenting to clients the status of their personal injury matters, improperly placing a \$10,000 attorney's lien on the case of another client after he was terminated one day after being retained to represent the client in a personal injury matter and after doing no work on behalf of the client, and being convicted of second-degree assault, which resulted in disbarment from practice of law in Maryland. In re Long, 948 A.2d 516, 2008 D.C. App. LEXIS 230 (2008).

Suspension from practice of law for two years, stayed in favor of probation for three years, with a nine-month actual suspension was appropriate reciprocal discipline for attorney's failure to file affidavit showing his compliance with court order requiring him pay restitution to former client, which resulted in suspension from practice of law in California for two years, stayed in favor of probation for three years, with a nine-month actual suspension. In re Coopet, 947 A.2d 1125, 2008 D.C. App. LEXIS 225 (2008).

Attorney's failure to cooperate with disciplinary authorities in another jurisdiction war-

ranted imposition of reciprocal 30-day suspension from practice of law, followed by 90 days of probation, where such sanction was within range of appropriate sanctions for such misconduct. In re Griffin, 945 A.2d 606, 2008 D.C. App. LEXIS 112 (2008).

Disbarment from practice of law in District of Columbia was appropriate reciprocal sanction for attorney's misappropriation of client funds and serious misrepresentations, which led to voluntary surrender of license to practice law in Georgia, which was tantamount to disbarment there. In re Griffin, 945 A.2d 606, 2008 D.C. App. LEXIS 112 (2008).

Disbarment was appropriate reciprocal discipline for attorney's massive misappropriation of client funds, commingling of client funds with personal funds, and abandonment of clients, which resulted in disbarment from practice of law in Florida. In re Drake, 944 A.2d 1035, 2008 D.C. App. LEXIS 100 (2008).

Five-year suspension was warranted in reciprocal discipline proceeding against attorney who resigned from California Bar while charges were pending for his unauthorized practice of law in Florida, even though the misconduct that led to the disciplinary proceeding against attorney occurred before his admission to the District of Columbia Bar. In re Drake, 944 A.2d 1035, 2008 D.C. App. LEXIS 100 (2008).

Suspended attorney would be required to show proof of fitness to practice law in District of Columbia, upon conclusion of his period of suspension in reciprocal attorney disciplinary action, where attorney's prior disciplinary record gave rise to serious doubt concerning his fitness to meet his responsibilities to court and to defendants in his practice as prosecutor, New York disciplinary authorities imposed such requirement, and attorney was required to make same showing in New York as in District of Columbia to demonstrate fitness. In re Stuart, 942 A.2d 1118, 2008 D.C. App. LEXIS 23 (2008).

Two-step analysis applies to imposition of substantially different discipline in reciprocal attorney-discipline proceeding in District of Columbia: first, it is necessary to determine if misconduct in question would not have resulted in same punishment in District it did in disciplining jurisdiction, and second, if discipline imposed in District would be different from that of disciplining court, it must be determined whether the difference is substantial. In re Stuart, 942 A.2d 1118, 2008 D.C. App. LEXIS 23 (2008).

To obtain nunc pro tunc treatment in reciprocal discipline proceeding in District of Columbia, lawyer facing reciprocal suspension should: (1) promptly notify Bar Counsel, with respect to foreign discipline; (2) cease practicing law in District of Columbia; (3) file a Goldberg affidavit with Board on Professional Responsibility

attesting to having completed the preceding two requirements; and (4) file affidavit of compliance with interim suspension order, with the Board and the Court of Appeals, with service on Bar Counsel. In re Stuart, 942 A.2d 1118, 2008 D.C. App. LEXIS 23 (2008).

Six-month suspension in District of Columbia, with requirement to prove fitness as condition of reinstatement, but with attorney permitted to petition to vacate the fitness requirement if he was summarily reinstated in Maryland, was appropriate reciprocal discipline for attorney who had received indefinite suspension in Maryland for lack of competence, commingling and misappropriation, disbursing client funds, and interfering with administration of justice. In re Stuart, 942 A.2d 1118, 2008 D.C. App. LEXIS 23 (2008).

Attorney's disbarment from practice of law in Tennessee for engaging in misrepresentation and deceit both to court and clients, failing to preserve client property, charging excessive fees, violating court orders, and other violations of court rules, warranted reciprocal sanction of disbarment in District of Columbia. In re Slavin, 940 A.2d 112, 2007 D.C. App. LEXIS 677 (2007).

Reciprocal discipline of five years' suspension from practice of law, coupled with proof of compliance with Virginia Supreme Court's conditions for reinstatement, was appropriate sanction for violations of Virginia ethics rules by attorney also licensed in District of Columbia, since recommendation of reciprocal discipline was unopposed and no evidence was presented to rebut presumption in favor of reciprocal discipline. In re Slavin, 940 A.2d 112, 2007 D.C. App. LEXIS 677 (2007).

Indefinite suspension from the practice of law, with right to apply for reinstatement after attorney was reinstated in Maryland or after five years, was appropriate reciprocal sanction for attorney's misconduct in committing a criminal act that reflected adversely on his honesty, trustworthiness or fitness as a lawyer, although such sanction is not specifically identified in the District of Columbia Bar Rules, where neither the attorney nor Bar Counsel opposed the imposition of discipline identical to that imposed by the State of Maryland. In re Rosenberg, 938 A.2d 783, 2008 D.C. App. LEXIS 1 (2008).

Six-month suspension, with requirement to prove fitness as condition of reinstatement, was warranted as reciprocal discipline in District of Columbia, after attorney received discipline in New Jersey, i.e., suspension for six months and "until further order" of New Jersey Supreme Court, for misconduct that included failure to safeguard and promptly deliver funds, record-keeping violations, failure to expedite litigation, lack of fairness to opposing party, lack of truthfulness, criminal conduct reflecting adversely on attorney's honesty, lack of trustwor-

thiness or fitness as lawyer, conduct involving dishonesty, fraud, deceit, or representation, and conduct prejudicial to administration of justice. In re Richardson, 935 A.2d 1076, 2007 D.C. App. LEXIS 657 (2007).

Imposition of identical discipline in District of Columbia, in reciprocal discipline proceeding after attorney received discipline in New Jersey, i.e., suspension for six months and "until further order" of New Jersey Supreme Court, would not result in miscarriage of justice; attorney participated in New Jersey disciplinary proceeding, entered stipulations, and submitted testimony. In re Richardson, 935 A.2d 1076, 2007 D.C. App. LEXIS 657 (2007).

In determining whether an attorney's misconduct warrants substantially different discipline as that imposed by the original disciplining jurisdiction, the Court of Appeals, in a reciprocal disciplinary proceeding, must consider: (1) whether the misconduct would have resulted in the same punishment in the District of Columbia, and (2) if the sanction would have been different, whether it is substantially so. In re Zakroff, 934 A.2d 409, 2007 D.C. App. LEXIS 643 (2007).

Sixty-day suspension from the practice of law, with a stay of the suspension in favor of a 60-day period of unsupervised probation, was warranted, in reciprocal attorney disciplinary proceeding; attorney was suspended from the practice of law in Virginia for 60 days, attorney promptly notified state bar counsel of the suspension, attorney did not practice law in state during his 60-day suspension in Virginia, after attorney resumed the practice of law in state bar counsel entered an interim suspension of attorney, and that suspension was lifted 60 days later, such that attorney had already served two separate 60-day suspensions from the practice of law in state. In re Beattie, 930 A.2d 972, 2007 D.C. App. LEXIS 555 (2007).

Imposition of reciprocal discipline was warranted, in attorney disciplinary case involving attorney who was suspended for 60 days by the Virginia State Bar Disciplinary Board, where attorney failed to establish that any of the exceptions to the imposition of reciprocal discipline applied. In re Beattie, 930 A.2d 972, 2007 D.C. App. LEXIS 555 (2007).

Six-month suspension from practice of law, rather than 60-day suspension, which was discipline attorney had received in foreign jurisdiction, was appropriate reciprocal discipline to impose upon attorney for negligent misappropriation of funds, as usual sanction for negligent misappropriation was a six-month suspension and difference between 60-day suspension and a six-month suspension was substantial. In re Greenwald, 926 A.2d 169, 2007 D.C. App. LEXIS 335 (2007).

Attorney's affidavit stating that since time of suspension from practice of law in foreign state

he had not had any clients in the District of Columbia was insufficient to satisfy bar rules requirement of an affidavit demonstrating that attorney had advised clients and attorneys for adverse parties of the suspension, and thus reciprocal 10-day suspension in the District of Columbia would be deemed to commence, for purpose of reinstatement, when attorney demonstrated either that there were no qualifying clients or adverse parties at the time of the foreign discipline, or that he had informed any such clients and adverse parties. In *re* Granoski, 911 A.2d 1225, 2006 D.C. App. LEXIS 634 (2006).

Appropriate discipline for attorney's misconduct, as found by the Supreme Court of Tennessee, including failure to follow court orders, conduct involving dishonesty, fraud, deceit, or misrepresentation, and intentionally prejudicing or damaging the client during the course of the professional relationship, was two-year suspension of attorney's license to practice law, with a fitness condition for reinstatement, where two-year suspension was ordered in Tennessee, attorney's misconduct in Tennessee also violated District of Columbia Rules of Professional Conduct, and identical discipline was within range of sanctions imposed for similar misconduct. In *re* Granoski, 911 A.2d 1225, 2006 D.C. App. LEXIS 634 (2006).

Disbarment was warranted in reciprocal disciplinary proceeding brought against attorney who was previously disbarred in Maryland for violations of Maryland's Rules of Professional Conduct, including intentional misappropriation; although attorney filed exceptions to the board on professional responsibility's report, he failed to file a brief, as required by several court orders, and thus, the recommendation for reciprocal discipline was effectively unopposed. In *re* Granoski, 911 A.2d 1225, 2006 D.C. App. LEXIS 634 (2006).

Massachusetts Board of Bar Overseers and Attorney Grievance Commission of Maryland were not the highest courts in their respective states, for purposes of determining whether reciprocal discipline could be imposed, under District of Columbia's reciprocal discipline rule, on attorneys disciplined in Massachusetts and Maryland; though the Board of Bar Overseers and the Attorney Grievance Commission had been delegated authority by their respective jurisdictions to recommend suspension or disbarment, "highest court" did not mean a lower level entity to which authority had been delegated by the highest court. In *re* Greenspan, 910 A.2d 324, 2006 D.C. App. LEXIS 583 (2006).

In reciprocal disciplinary action, five-year suspension, with reinstatement conditioned upon proof of fitness to practice, was appropriate sanction for attorney who had resigned from the New York Bar because he had with-

drawn client funds without the knowledge and consent of his clients and had failed to retain records for his attorney trust accounts; suspension for five years, with reinstatement conditioned on proof of fitness, was functionally identical to sanction imposed in New York, in that attorney was ineligible to seek reinstatement in New York until seven years after effective date of his resignation. In *re* Greenspan, 910 A.2d 324, 2006 D.C. App. LEXIS 583 (2006).

In reciprocal attorney disciplinary action, six-month suspension was appropriate sanction for attorney who was publicly censured in Arizona for neglect, negligent misappropriation, commingling, and trust account violations; the difference between a public censure and a six-month suspension was substantial, Board on Professional Responsibility found that an exception to the imposition of identical reciprocal discipline existed and that substantially different discipline of a six-month suspension was instead warranted, and six-month suspension was within the range of sanctions imposed for similar misconduct. In *re* Vejar, 908 A.2d 1171, 2006 D.C. App. LEXIS 541 (2006).

Delay in Maryland attorney disciplinary proceedings did not prejudice attorney or constitute a denial of due process, for the purpose of reciprocal disciplinary proceeding; attorney had notice of the Maryland proceedings, he participated in the proceedings and was represented by counsel, the Maryland court considered the delay in resolving the disciplinary complaint, and the reciprocal disciplinary proceedings did not provide attorney with an opportunity to collaterally attack the Maryland judgment. In *re* Hermina, 907 A.2d 790, 2006 D.C. App. LEXIS 509 (2006).

Attorney failed to establish that exception to presumptive imposition of reciprocal discipline, based on finding that imposition of same discipline by Court of Appeals would result in grave injustice, applied to prevent imposition of reciprocal discipline of one-year suspension, stayed for two years of unsupervised probation; attorney stipulated that he has never practiced law in the District of Columbia, and that he has no relationships with counsel, no clients or office, and no plans to practice law in District of Columbia. In *re* Fuchs, 905 A.2d 160, 2006 D.C. App. LEXIS 431 (2006).

In reciprocal discipline case, one year suspension, stayed in favor of probation for two years and an actual suspension of sixty days, was appropriate sanction for attorney who was suspended in California for one-year, with the suspension stayed in favor of probation for two years subject to certain conditions, for ethical violations with respect to his representation of a client. In *re* Coopet, 904 A.2d 359, 2006 D.C. App. LEXIS 439 (2006).

Three-year suspension from the practice of law, with a fitness requirement for reinstatement, was warranted, in reciprocal attorney disciplinary case in which attorney was found to have violated the New Jersey rules of professional conduct by committing a criminal act that reflected adversely on attorney's honesty, trustworthiness, or fitness as a lawyer and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; the sanction imposed by the New Jersey courts was within the range of sanctions that would be imposed for similar misconduct in the District of Columbia. *In re Meaden*, 902 A.2d 802, 2006 D.C. App. LEXIS 412 (2006).

The New Jersey court's application of its standard for determining whether attorney's mental condition warranted mitigation of disciplinary sanctions, which differed from the standard applied in the District of Columbia, did not warrant rejection of the discipline imposed during disciplinary proceedings in New Jersey, in reciprocal disciplinary case, even though attorney argued that he was entitled to mitigation of sanction under the District of Columbia standard; the principles of collateral estoppel applied in reciprocal disciplinary cases. *In re Meaden*, 902 A.2d 802, 2006 D.C. App. LEXIS 412 (2006).

When attorney fails to participate in the disciplinary proceedings, the imposition of identical reciprocal discipline should be close to automatic, with minimum review by both the Board of Professional Responsibility and Court of Appeals. *In re Willingham*, 900 A.2d 165, 2006 D.C. App. LEXIS 299 (2006).

In reciprocal disciplinary action, five-year suspension, with attorney's reinstatement conditioned on fitness and compliance with the Bankruptcy Court's order of disgorgement, was appropriate sanction for attorney who was suspended from practicing before Bankruptcy Court for five years and whose reinstatement was conditioned on his disgorgement of \$39,297.06 in legal fees he made when representing debtors in bankruptcy proceeding; attorney failed to disclose his representation of entities that were associated with debtors, recorded post-petition liens on debtors' residence without proper disclosure to Bankruptcy Court or debtors, and violated Bankruptcy Court orders. *In re Lickstein*, 898 A.2d 897, 2006 D.C. App. LEXIS 204 (2006).

Attorney's disbarment in another jurisdiction warranted his reciprocal disbarment in the District of Columbia, where attorney failed to rebut presumption favoring identical reciprocal discipline, no evidence in record indicated that reciprocal discipline was inappropriate, and unopposed recommendation of disbarment by Board on Professional Responsibility was entitled to heightened deference on judicial review.

In re Lickstein, 898 A.2d 897, 2006 D.C. App. LEXIS 204 (2006).

Attorney's violations of provisions of Virginia Code of Professional Responsibility prohibiting deliberately wrongful acts reflecting adversely on fitness, dishonesty, intentional failure to seek client's lawful objectives, intentional failure to carry out employment contract, intentional prejudice or damage to client, and unauthorized practice of law, and requiring reasonable fees, explanations of contingent fees, competence, promptness, and advising clients of communications from another party, and resulting in imposition of three-year suspension, warranted imposition of identical reciprocal sanction in the District of Columbia, where sufficient evidence supported findings of charged misconduct and recommended sanction did not constitute inconsistent disposition. *In re Foshee*, 897 A.2d 203, 2006 D.C. App. LEXIS 197 (2006).

Six-month suspension as reciprocal discipline running nunc pro tunc from date of affidavit by attorney was warranted for dishonesty, false claim of being an expert or specialist in immigration matters, failure to attend promptly to matters undertaken for a client, and lack of competence. *In re Park*, 894 A.2d 411, 2006 D.C. App. LEXIS 95 (2006).

District of Columbia handled disciplinary actions arising from an attorney's personal attacks on a judge or court officer differently from Maryland, as element for determining whether it was appropriate for District of Columbia Court of Appeals to apply the "substantially different discipline" exception to the presumption in favor of identical reciprocal discipline of an attorney. *In re DeMaio*, 893 A.2d 583, 2006 D.C. App. LEXIS 89 (2006).

Suspension for 18 months, rather than disbarment, was appropriate reciprocal discipline in District of Columbia, after attorney had been disbarred in Maryland for making false and inflammatory allegations against a judge and a court clerk. *In re DeMaio*, 893 A.2d 583, 2006 D.C. App. LEXIS 89 (2006).

Attorney's bizarre and erratic behavior before Maryland courts, relating to his false and inflammatory allegations against judge and court clerk in Maryland, and the content of his filings in reciprocal discipline proceeding in District of Columbia, cast serious doubt upon attorney's continuing fitness to practice law, and thus, it was appropriate to condition attorney's reinstatement, following 18-month suspension in District of Columbia, upon attorney's demonstration of his fitness to practice law. *In re DeMaio*, 893 A.2d 583, 2006 D.C. App. LEXIS 89 (2006).

To decide whether it is appropriate to apply the "substantially different discipline" exception to the presumption in favor of identical reciprocal discipline of an attorney, the Court of

Appeals undertakes a two-step inquiry: (1) whether the misconduct in question would not have resulted in the same punishment in the District of Columbia as it did in the disciplining jurisdiction, and (2) if the discipline imposed in the District of Columbia would be different from that of the disciplining court, whether the difference is substantial. In *re DeMaio*, 893 A.2d 583, 2006 D.C. App. LEXIS 89 (2006).

Court of Appeals, in imposing reciprocal discipline on attorney, would adhere to principles of collateral estoppel and accept ruling of New York court that disbarred attorney, rather than entertain attorney's allegations that there was an "infirmity of proof" with respect to New York ethics panel's conclusion that attorney's conduct had been prejudicial to administration of justice, particularly where several courts had examined report of ethics panel and had rejected attorney's allegations of "infirmity of proof." In *re Edelstein*, 892 A.2d 1153, 2006 D.C. App. LEXIS 84 (2006).

In cases where neither Bar Counsel nor the attorney opposes reciprocal discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline, a situation that would rarely, if ever, present itself. In *re Zentz*, 891 A.2d 277, 2006 D.C. App. LEXIS 26 (2006).

In reciprocal disciplinary action, public censure was appropriate sanction for attorney who was reprimanded in Maryland for assisting a disbarred attorney in filing papers in the United States Bankruptcy Court; there was no miscarriage of justice in the Maryland proceedings as the record revealed that attorney was not denied due process and was represented by counsel when he voluntarily consented to discipline, and censure in the District of Columbia was the functional equivalent of a reprimand by the Maryland Court of Appeals. In *re Zentz*, 891 A.2d 277, 2006 D.C. App. LEXIS 26 (2006).

Disbarment in District of Columbia was appropriate reciprocal discipline, after attorney had been disbarred in Maryland for intentional misappropriation of client funds and failure to respond to requests for information made by Maryland Bar Counsel. In *re Zentz*, 891 A.2d 277, 2006 D.C. App. LEXIS 26 (2006).

There is a rebuttable presumption that the sanction imposed by the Court of Appeals in a reciprocal attorney discipline case will be identical to that imposed by the original disciplining court; this presumption is rebutted only if the attorney demonstrates, or the face of the record reveals, by clear and convincing evidence the existence of one of the conditions enumerated in the applicable bar rule. In *re Angel*, 889 A.2d 993, 2005 D.C. App. LEXIS 648 (2005).

Identical and reciprocal sanction of disbarment, in attorney disciplinary proceedings, was not so excessive as to be grossly unjust, where bar counsel recommended disbarment and attorney did not oppose it. In *re Angel*, 889 A.2d 993, 2005 D.C. App. LEXIS 648 (2005).

Attorney did not meet his burden of establishing that his conduct as prosecutor in Maryland, for which he had received public reprimand in that state for violating state's professional conduct rule regarding trial publicity, did not violate District of Columbia's professional conduct rule regarding special responsibilities of a prosecutor, as exception to rebuttable presumption, created by District Bar Rule regarding reciprocal discipline, that attorney discipline will be the same in District as it was in original disciplining jurisdiction; attorney merely made a conclusory assertion, without attempting to show clearly and convincingly that differences in language in professional conduct rules permitted any more liberal resort to out-of-court statements by prosecutors in District than in Maryland. In *re Angel*, 889 A.2d 993, 2005 D.C. App. LEXIS 648 (2005).

Attorney's contention that he could not have foreseen that his extrajudicial comments as prosecutor would violate Maryland professional conduct rule's safe harbor regarding trial publicity did not establish that Maryland attorney disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute deprivation of due process, as exception to rebuttable presumption, created by District of Columbia Bar Rule regarding reciprocal discipline, that attorney discipline will be the same in District as it was in original disciplining jurisdiction. In *re Angel*, 889 A.2d 993, 2005 D.C. App. LEXIS 648 (2005).

"Infirmity of proof" exception to rebuttable presumption, created by District of Columbia Bar Rule regarding reciprocal discipline, that attorney discipline will be the same in District as it was in original disciplining jurisdiction is not invitation to attorney to relitigate in District adverse findings of another court in procedurally fair hearing. In *re Angel*, 889 A.2d 993, 2005 D.C. App. LEXIS 648 (2005).

Attorney's assertion, without further elaboration, that Maryland Bar Counsel had not provided, in Maryland attorney disciplinary hearing, a scintilla of proof that attorney, as prosecutor, knew or should have known that any extrajudicial comments he made about pending prosecutions would have substantial likelihood of materially prejudicing an adjudicative proceeding, in violation of Maryland professional conduct rule regarding trial publicity, did not establish infirmity of proof, as exception to rebuttable presumption, created by District of Columbia Bar Rule regarding reciprocal discipline, that attorney discipline would be the same in District as it was in original disciplin-

ing jurisdiction. In re Angel, 889 A.2d 993, 2005 D.C. App. LEXIS 648 (2005).

The District of Columbia Bar Rule regarding reciprocal discipline creates a rebuttable presumption that the attorney discipline will be the same in the District as it was in the original disciplining jurisdiction. In re Angel, 889 A.2d 993, 2005 D.C. App. LEXIS 648 (2005).

Public censure was appropriate disciplinary sanction in District of Columbia, as reciprocal discipline after attorney was publicly reprimanded in Maryland for his conduct, as a prosecutor, in violating Maryland professional conduct rule regarding trial publicity. In re Angel, 889 A.2d 993, 2005 D.C. App. LEXIS 648 (2005).

Disbarment was appropriate reciprocal discipline in District of Columbia, after attorney was disbarred in New York for failing to seek reinstatement from interim suspension within six months; District of Columbia Bar Counsel recommended disbarment, attorney had not opposed disbarment, and disbarment was not so excessive as to be grossly unjust. In re Reis, 888 A.2d 1158, 2005 D.C. App. LEXIS 643 (2005).

A rebuttable presumption exists in a reciprocal attorney discipline proceeding that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In re Reis, 888 A.2d 1158, 2005 D.C. App. LEXIS 643 (2005).

New York attorney disciplinary proceeding, in which attorney was disbarred for failing to seek reinstatement from interim suspension within six months, did not involve miscarriage of justice, as exception to rebuttable presumption in reciprocal discipline proceeding that discipline will be same in District of Columbia as it was in original disciplining jurisdiction; New York disciplinary authorities took various extraordinary measures to locate and notify attorney of disciplinary charges, but attorney failed to respond or participate in New York disciplinary proceeding. In re Reis, 888 A.2d 1158, 2005 D.C. App. LEXIS 643 (2005).

In reciprocal attorney discipline cases in which neither Bar Counsel nor the attorney opposes identical discipline in the District of Columbia, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign disciplinary proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline. In re Reis, 888 A.2d 1158, 2005 D.C. App. LEXIS 643 (2005).

Indefinite suspension with ability to petition for reinstatement in five years warranted reciprocal discipline of five-year suspension with reinstatement conditioned on proof of fitness to practice law; the Massachusetts sanction was the functional equivalent of a suspension in the District of Columbia for the same length of

time, coupled with a fitness requirement. In re Reis, 888 A.2d 1158, 2005 D.C. App. LEXIS 643 (2005).

Bar rules create a rebuttable presumption which favors the imposition of identical reciprocal discipline, even when the disciplinary sanction in question would not otherwise be available in the District of Columbia. In re Reis, 888 A.2d 1158, 2005 D.C. App. LEXIS 643 (2005).

When the imposition of reciprocal discipline is not contested by an attorney, the role of the Board on Professional Responsibility is restricted to reviewing the proceeding in the foreign court to be assured that no blatant miscarriage of justice would take place if reciprocal discipline were imposed. In re Smith, 886 A.2d 75, 2005 D.C. App. LEXIS 541 (2005).

There is a presumption in favor of identical reciprocal attorney discipline, unless the attorney demonstrates, or the court finds on the face of the record, by clear and convincing evidence, that one or more of the five exceptions set forth in the applicable bar rule applies. In re Smith, 886 A.2d 75, 2005 D.C. App. LEXIS 541 (2005).

Attorney's disbursement of funds held in escrow for clients for his own personal use and failure to account for such funds upon request of disciplinary authority, in violation of attorney disciplinary rules and statutes of Maryland prohibiting intentional misappropriation of client funds, conduct involving dishonesty, fraud, deceit, or misrepresentation, failure to turn over records to Bar Counsel, on request, and misleading Bar Counsel with regard to status of trust funds, warranted imposition of reciprocal discipline of disbarment, absent evidence of miscarriage of justice. In re Smith, 886 A.2d 75, 2005 D.C. App. LEXIS 541 (2005).

In reciprocal action, disbarment was appropriate sanction for attorney who had been disbarred in Maryland for misappropriation and dishonesty. In re Smith, 886 A.2d 75, 2005 D.C. App. LEXIS 541 (2005).

Reciprocal attorney discipline proceedings are not a forum to reargue the foreign discipline. In re Smith, 886 A.2d 75, 2005 D.C. App. LEXIS 541 (2005).

Role of Court of Appeals in reciprocal attorney discipline cases differs from that in original discipline matters: (1) first, there is no need for a de novo repetition of the entire process, and the burden of persuasion is reversed; and (2) second, there is merit in the idea of granting due deference, for its sake alone, to the opinions and actions of a sister jurisdiction with respect to attorneys over whom courts share supervisory authority. In re Smith, 886 A.2d 75, 2005 D.C. App. LEXIS 541 (2005).

Since attorney was given notice, participated in the hearings, and was given a full opportunity to cross-examine witnesses in his Maryland disciplinary proceeding, attorney did not

establish due process violation, and thus, District of Columbia would rely on the Maryland court's determination that attorney committed ethical violations when determining appropriate reciprocal discipline for attorney. In re Smith, 886 A.2d 75, 2005 D.C. App. LEXIS 541 (2005).

A determination by the Board on Professional Responsibility that one or more of the exceptions to imposing identical reciprocal attorney discipline applies in a case is a question of law or ultimate fact; accordingly, review by the Court of Appeals is *de novo*. In re Smith, 886 A.2d 75, 2005 D.C. App. LEXIS 541 (2005).

Rule providing that identical discipline will be imposed in reciprocal attorney disciplinary case creates a rebuttable presumption that the discipline will be the same in the District of Columbia as it was in the original jurisdiction. In re Smith, 886 A.2d 75, 2005 D.C. App. LEXIS 541 (2005).

District of Columbia Court of Appeals defers to findings of fact made by other courts in reciprocal attorney disciplinary proceedings. In re Smith, 886 A.2d 75, 2005 D.C. App. LEXIS 541 (2005).

In reciprocal disciplinary cases where neither Bar Counsel nor attorney opposes identical discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline, a situation that would rarely, if ever, present itself. In re DeWitt, 884 A.2d 641, 2005 D.C. App. LEXIS 511 (2005).

In reciprocal disciplinary action, attorney who had been suspended for 60 days in California, with a stay of execution in favor of 18 month probation, for failing to counsel or maintain only those actions as appeared to him legal or just would be suspended from the practice of law in District of Columbia for a period of 60 days, with stay of execution of suspension in favor of 18 month term of probation; there was no miscarriage of justice in the California proceeding because attorney agreed to stipulated facts, admitted the violation, and consented to the sanction imposed by the Supreme Court of California. In re DeWitt, 884 A.2d 641, 2005 D.C. App. LEXIS 511 (2005).

In reciprocal disciplinary cases where neither Bar Counsel nor attorney oppose identical discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline, a situation that would rarely, if ever, present itself. In re DeWitt, 884 A.2d 641, 2005 D.C. App. LEXIS 511 (2005).

In reciprocal disciplinary action, 90 day suspension was appropriate for attorney who had

been suspended in Maryland for 90 days for failing to file her federal and state income tax returns; there was no miscarriage of justice in the Maryland proceeding because attorney received notice of the proceeding and was represented by counsel when she voluntarily consented to the Maryland discipline. In re DeWitt, 884 A.2d 641, 2005 D.C. App. LEXIS 511 (2005).

Circumstances warranted imposition of reciprocal discipline upon attorney sanctioned with nine-month suspension for lack of competence and diligence and other violations of professional conduct rules of Maryland, with reinstatement in the District of Columbia conditioned on proof of readmission in Maryland or other affirmative showing of compliance with conditions imposed by Maryland court, where Board on Professional Responsibility so recommended and attorney did not report his suspension to Bar Counsel or participate in proceedings before Board, filed no response to statement on reciprocal discipline, and filed no exceptions to Board's recommendation. In re DeWitt, 884 A.2d 641, 2005 D.C. App. LEXIS 511 (2005).

When the imposition of reciprocal discipline is not contested by the attorney in an attorney disciplinary case, the Board on Professional Responsibility, at most, must review the proceeding in the foreign court to be assured that no blatant miscarriage of justice would take place if reciprocal discipline were imposed. In re DeWitt, 884 A.2d 641, 2005 D.C. App. LEXIS 511 (2005).

Reciprocal disbarment of attorney was warranted; attorney was disbarred in Maryland, the Board on Professional Responsibility found no evidence that the proceeding in Maryland lacked due process or that there was insufficient proof, and attorney's misconduct in Maryland, which involved dishonesty, would justify disbarment if committed in the District of Columbia. In re DeWitt, 884 A.2d 641, 2005 D.C. App. LEXIS 511 (2005).

Reciprocal discipline of a one-year suspension with reinstatement conditioned on proof of fitness to practice law was warranted by one-year suspension in Illinois based on charges of threatening to present criminal charges to gain advantage in a civil matter, intentionally degrading a witness or other person before a tribunal, communicating with represented party without lawyer's consent, making false statements of material fact, engaging in dishonesty, fraud, deceit, or misrepresentation, and engaging in conduct prejudicial to the administration of justice. In re DeWitt, 884 A.2d 641, 2005 D.C. App. LEXIS 511 (2005).

In uncontested cases involving reciprocal discipline, the most the Board on Professional Responsibility should consider itself obligated to do is to review the foreign proceeding suffi-

ciently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline. In *re DeWitt*, 884 A.2d 641, 2005 D.C. App. LEXIS 511 (2005).

In uncontested cases involving reciprocal discipline, review by Supreme Court and Board on Professional Responsibility is limited, and the presumption is in favor of identical reciprocal discipline, unless the attorney demonstrates, or the court finds on the face of the record, by clear and convincing evidence, that one or more of the five exceptions to reciprocal discipline applies. In *re DeWitt*, 884 A.2d 641, 2005 D.C. App. LEXIS 511 (2005).

Attorney's suspension in District of Columbia, as identical reciprocal discipline following his suspension in Nevada, would run prospectively, where attorney did not request that his suspension run concurrently with the Nevada suspension. In *re Hagendorf*, 881 A.2d 616, 2005 D.C. App. LEXIS 455 (2005).

Imposition of identical reciprocal discipline in District of Columbia, after attorney was suspended in Nevada for five months, with all but 60 days conditionally stayed, was mandatory, because the discipline imposed in Nevada fell within range of sanctions that would be considered in District of Columbia for attorney's violation of disciplinary rules regarding candor toward tribunal, relations with opposing counsel, truthfulness in statements to others, prohibition of conduct involving dishonesty, fraud, deceit, or misrepresentation, and prohibition of conduct prejudicial to administration of justice. In *re Hagendorf*, 881 A.2d 616, 2005 D.C. App. LEXIS 455 (2005).

A rebuttable presumption exists that the reciprocal discipline of attorney will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In *re Hagendorf*, 881 A.2d 616, 2005 D.C. App. LEXIS 455 (2005).

No obvious miscarriage of justice would result from imposition of identical reciprocal discipline in District of Columbia, after attorney was suspended in Nevada for five months, with all but 60 days conditionally stayed, for conduct violating Nevada disciplinary rules on candor toward tribunal, relations with opposing counsel, truthfulness in statements to others, prohibition of conduct involving dishonesty, fraud, deceit, or misrepresentation, and prohibition of conduct prejudicial to administration of justice; in the Nevada proceeding, attorney received proper notice and was represented by counsel. In *re Hagendorf*, 881 A.2d 616, 2005 D.C. App. LEXIS 455 (2005).

Attorney's conduct of signing names of co-counsel to document without noting in every instance that he was executing document on their behalf warranted public censure, which was reciprocal discipline or punishment identical to that imposed in other state in which

attorney was licensed to practice law. In *re Howard*, 879 A.2d 681, 2005 D.C. App. LEXIS 383 (2005).

Court of Appeals presumptively imposes identical reciprocal discipline unless the attorney demonstrates by clear and convincing evidence that the case falls within one of five specified exceptions to reciprocal discipline. In *re Howard*, 879 A.2d 681, 2005 D.C. App. LEXIS 383 (2005).

In reciprocal disciplinary action, eighteen month suspension was appropriate sanction for attorney who was reprimanded in Maryland for intentionally misleading a federal court by intentionally filing a false status report and attaching documents that he had fabricated in order to support his fraudulent report. In *re Parshall*, 878 A.2d 1253, 2005 D.C. App. LEXIS 388 (2005).

In reciprocal discipline cases, there is a presumption favoring the imposition of the same discipline as that of the original disciplining jurisdiction. In *re Parshall*, 878 A.2d 1253, 2005 D.C. App. LEXIS 388 (2005).

Attorney's failure to file and pay federal and state income tax returns for three consecutive years and to pay self-employment tax for four consecutive years warranted suspension of bar license for two years, with execution of suspension stayed in deference to probation, which was reciprocal discipline, identical to that imposed by other state in which attorney was licensed. In *re Parshall*, 878 A.2d 1253, 2005 D.C. App. LEXIS 388 (2005).

Assuming that dismissal of disciplinary charges, subject to certain terms, against attorney in Virginia amounted to "discipline" in District of Columbia, evidence of additional violations presented in proceedings in District of Columbia supported refusal of Court of Appeals to impose reciprocal jurisdiction upon attorney originally subjected to discipline in Virginia; findings of misconduct in District of Columbia went beyond findings in Virginia that attorney failed to keep his client advised, and included finding that attorney unduly burdened administration of justice and engaged in sustained pattern of misconduct warranting suspension. In *re Thyden*, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Attorney's unsubstantiated assertion that imposition of reciprocal discipline would be grave injustice was insufficient to warrant imposition of any lesser sanction than disbarment for attorney's intentional misrepresentations during bar application process. In *re Demos*, 875 A.2d 636, 2005 D.C. App. LEXIS 262 (2005).

Imposition in District of Columbia of greater discipline than that imposed upon attorney by original disciplining court, under the "substantially different discipline" exception to general rule of identical reciprocal discipline, did not

implicate full faith and credit provision of United States Constitution, federal statute setting forth doctrine of full faith and credit among and between state courts, or reciprocity principles of recognition of disciplinary judgments between states. In *re Demos*, 875 A.2d 636, 2005 D.C. App. LEXIS 262 (2005).

Attorney's intentional misrepresentations on application for admission to Arizona federal bar warranted disbarment, where discipline imposed in Arizona federal court was not within range of possible sanctions in District of Columbia and was substantially less severe than sanction to which attorney would have been subject had his misconduct occurred in District of Columbia. In *re Demos*, 875 A.2d 636, 2005 D.C. App. LEXIS 262 (2005).

For purposes of reciprocal attorney disciplinary proceedings, being stricken from the rolls of attorneys in the Arizona federal court is the functional equivalent of an indefinite suspension in the District of Columbia. In *re Demos*, 875 A.2d 636, 2005 D.C. App. LEXIS 262 (2005).

For purposes of determining whether the "substantially different discipline" exception warrants greater or lesser discipline in reciprocal attorney discipline proceedings, if the discipline which would be imposed in the District of Columbia would be different from that of the original disciplining court, the Court of Appeals must then decide whether such difference is substantial. In *re Demos*, 875 A.2d 636, 2005 D.C. App. LEXIS 262 (2005).

For purposes of determining whether the "substantially different discipline" exception warrants greater or lesser discipline in reciprocal attorney discipline proceedings, "same punishment" is defined as a sanction within the range of sanctions that would be imposed for the same misconduct. In *re Demos*, 875 A.2d 636, 2005 D.C. App. LEXIS 262 (2005).

In reciprocal disciplinary action, disbarment was appropriate sanction for attorney who was disbarred in New York for misappropriating approximately \$108,000 from various clients. In *re Hendin*, 873 A.2d 1100, 2005 D.C. App. LEXIS 209 (2005).

Disbarment was warranted as reciprocal discipline in District of Columbia, following attorney's disbarment in Virginia, which was based upon order issued by federal Bankruptcy Court for failing to appear for several hearings, and in Maryland for engaging in the unauthorized practice of law. In *re Harris-Smith*, 871 A.2d 1183, 2005 D.C. App. LEXIS 156 (2005).

Imposition of identical reciprocal discipline in attorney discipline proceeding was mandatory, even assuming that Court of Appeals would impose different sanction if case were prosecuted in District of Columbia as original matter, where three-year suspension and fitness requirement imposed in original disciplin-

ing jurisdiction fell within range of appropriate sanctions in District of Columbia. In *re Winick*, 866 A.2d 51, 2005 D.C. App. LEXIS 8 (2005).

Rebuttable presumption exists that reciprocal attorney discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction; however, the Court of Appeals may impose a different sanction if it determines both that the misconduct in question would not have resulted in the same punishment in the District of Columbia as it did in the disciplining jurisdiction, and that the difference is substantial. In *re Winick*, 866 A.2d 51, 2005 D.C. App. LEXIS 8 (2005).

Suspension for 30 days was warranted as reciprocal discipline in District of Columbia, following attorney's public reprimand in Virginia for representing multiple criminal defendants facing prosecution arising out of same matter, where attorney had prior discipline in District of Columbia for commingling personal and client funds, and the underlying conflict of interest in representing the multiple criminal defendants was obvious. In *re McGann*, 863 A.2d 864, 2004 D.C. App. LEXIS 682 (2004).

Two-year suspension, with execution stayed for three years conditioned upon attorney not being held by North Carolina State Bar to be in violation of its disciplinary order suspending him for two years subject to conditional stay, was appropriate reciprocal discipline in District of Columbia, after attorney was convicted of assault of female and received suspended 45-day jail sentence in North Carolina. In *re McGann*, 863 A.2d 864, 2004 D.C. App. LEXIS 682 (2004).

Thirteen-month suspension of attorney in another state warranted identical reciprocal discipline to begin upon the filing of affidavit of compliance with suspension order; no exceptions were filed to the recommendation by the Board on Professional Responsibility. In *re McGann*, 863 A.2d 864, 2004 D.C. App. LEXIS 682 (2004).

In reciprocal disciplinary proceeding, attorney's unauthorized practice of law in Maryland, for which he was disbarred, constituted "misconduct" within the meaning of District of Columbia's ethical rules. In *re Barneys*, 861 A.2d 1270, 2004 D.C. App. LEXIS 619 (2004).

In reciprocal disciplinary case, disbarment was appropriate sanction for attorney who was disbarred in Maryland for the unauthorized practice of law, and sanction of disbarment yielded no manifest injustice; attorney engaged in deliberate and persistent misconduct by representing at least five clients in Maryland state courts while unlicensed. In *re Barneys*, 861 A.2d 1270, 2004 D.C. App. LEXIS 619 (2004).

Since attorney failed to respond to the show cause order or participate in the reciprocal disciplinary proceedings before the Board on Professional Responsibility, attorney, who was

disbarred in Maryland for the unauthorized practice of law, could not challenge the imposition of reciprocal disbarment unless he could meet the "demanding" miscarriage of justice standard. In re Barneys, 861 A.2d 1270, 2004 D.C. App. LEXIS 619 (2004).

In reciprocal disciplinary case, disbarment was appropriate sanction for attorney who was disbarred in Maryland for the unauthorized practice of law, and sanction of disbarment yielded no manifest injustice; attorney engaged in deliberate and persistent misconduct by representing at least five clients in Maryland state courts while unlicensed. In re Barneys, 861 A.2d 1270, 2004 D.C. App. LEXIS 619 (2004).

Procedural safeguards, before imposition of disbarment as reciprocal discipline in District of Columbia, were sufficient, though attorney did not participate in District of Columbia reciprocal discipline proceeding; in original disciplinary proceeding in which attorney was disbarred in Georgia, and in prior reciprocal discipline proceeding in which attorney was disbarred in Maryland, attorney participated and offered explanations and potential mitigating circumstances that were rejected. In re Barneys, 861 A.2d 1270, 2004 D.C. App. LEXIS 619 (2004).

Disbarment was warranted as reciprocal discipline in District of Columbia, following attorney's disbarment in Georgia for dishonesty, failure to promptly deliver and account for trust funds, conflicts of interest, and excessive fees, in medical malpractice cases. In re Barneys, 861 A.2d 1270, 2004 D.C. App. LEXIS 619 (2004).

A rebuttable presumption exists, in a reciprocal attorney discipline proceeding, that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In re Barneys, 861 A.2d 1270, 2004 D.C. App. LEXIS 619 (2004).

Attorney, who had been disbarred in another state, was entitled to a hearing before the Committee on Admissions (COA) on his application for admission to the Bar; attorney contended that an exception to the reciprocal discipline rule applied and that the discipline imposed in other state was substantially more severe than the sanction that would have been imposed had attorney committed misconduct within state. In re Ramos, 860 A.2d 843, 2004 D.C. App. LEXIS 576 (2004).

Attorney had sufficient notice of reciprocal disciplinary proceeding in District of Columbia, following his disbarment in Maryland, though Board on Professional Responsibility was not able to contact attorney, where attorney's current address was unknown, he failed to inform the bar of his current address, and the Board tried to contact him at his previous addresses but those attempts were unsuccessful. In re

Ramos, 860 A.2d 843, 2004 D.C. App. LEXIS 576 (2004).

Disbarment would be imposed as reciprocal discipline in District of Columbia, following attorney's disbarment in Maryland; rebuttable presumption favored identical discipline, nothing in the record indicated that reciprocal discipline was inappropriate, the Board on Professional Responsibility recommended disbarment, and Board's recommendation was entitled to heightened deference because it was unopposed. In re Ramos, 860 A.2d 843, 2004 D.C. App. LEXIS 576 (2004).

In reciprocal disciplinary action, six-month suspension, as opposed to 90-day suspension, was appropriate sanction for attorney who was suspended in Maryland for ninety days for negligently misappropriating client funds; six-month suspension was consistent with the discipline usually meted out in District of Columbia for negligent misappropriation. In re Ramos, 860 A.2d 843, 2004 D.C. App. LEXIS 576 (2004).

While there is a rebuttable presumption that, in reciprocal attorney discipline cases, the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction, Court of Appeals may impose a different sanction if it determines that: (1) the misconduct in question would not have resulted in the same punishment in the District of Columbia as it did in the disciplining jurisdiction; and (2) the difference is substantial. In re Ramos, 860 A.2d 843, 2004 D.C. App. LEXIS 576 (2004).

In reciprocal disciplinary case, public censure was appropriate sanction for attorney who was reprimanded in Maryland for neglect, failure to provide competent representation, failure to communicate, and conduct prejudicial to the administration of justice; public censure in the District of Columbia was the functional equivalent of a public reprimand in Maryland. In re Ramos, 860 A.2d 843, 2004 D.C. App. LEXIS 576 (2004).

In reciprocal disciplinary proceeding, indefinite suspension was appropriate sanction for attorney who had been indefinitely suspended in Maryland for making false representations to his law firm and to clients with respect to services he had claimed to have performed on their behalf, and attorney could apply for reinstatement after he was reinstated in Maryland or after five years, whichever occurred first. In re Hardwick, 859 A.2d 1063, 2004 D.C. App. LEXIS 517 (2004).

Reciprocal discipline of disbarment was warranted for attorney who was disbarred in Maryland for failing to return funds to former client in a timely fashion, who falsified evidence to cover up that fact, and who then lied to both Bar Counsel and a circuit judge about his actions; there was nothing in record to indicate

that reciprocal discipline was inappropriate, and recommendation for disbarment was unopposed. In *re Hardwick*, 859 A.2d 1063, 2004 D.C. App. LEXIS 517 (2004).

Failure of attorney, who was suspended for 30 days in Maryland for writing a check on a trust account which reduced its balance to about \$300 below the escrowed funds belonging to a third party, to file an exception to the Board on Professional Responsibility's report and recommendation acted as a concession that reciprocal discipline was warranted and that the Board's proposed sanction of six month suspension was appropriate. In *re McClain*, 856 A.2d 589, 2004 D.C. App. LEXIS 419 (2004).

Attorney who failed to respond to order of Court of Appeals to show cause why reciprocal discipline should not be imposed effectively defaulted on the issue of whether such cause existed. In *re Grant*, 851 A.2d 428, 2004 D.C. App. LEXIS 273 (2004).

Attorney's failure to file an opposition to the report and recommendation by the Board on Professional Responsibility was a concession that reciprocal discipline was warranted. In *re Grant*, 851 A.2d 428, 2004 D.C. App. LEXIS 273 (2004).

Identical reciprocal discipline of disbarment following disbarment in New York was permissible without adversarial testing of the allegations of misappropriation of client funds, conflict of interest, dishonesty, fraud, deceit or misrepresentation, and conduct prejudicial to the administration of justice; the attorney did not participate in the proceedings and had tendered an affidavit of resignation that he could not defend against the allegations in New York, and the affidavit assured Court of Appeals that no obvious miscarriage of justice would result from the imposition of identical discipline. In *re Grant*, 851 A.2d 428, 2004 D.C. App. LEXIS 273 (2004).

In a reciprocal attorney discipline case, there is a general presumption that discipline in the District of Columbia should mirror the sanction imposed by the first jurisdiction. In *re Drager*, 846 A.2d 992, 2004 D.C. App. LEXIS 157 (2004).

Misconduct for which attorney was disbarred in two out-of-state disciplinary proceedings warranted reciprocal sanction of disbarment, where attorney did not contest imposition of disbarment in out-of-state proceedings or recommendation of disbarment in District of Columbia. In *re Drager*, 846 A.2d 992, 2004 D.C. App. LEXIS 157 (2004).

A rebuttable presumption exists that the reciprocal discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction; however, the Board on Professional Responsibility and the Court of Appeals may impose a different sanction if it determines: (1) the misconduct in question

would not have resulted in the same punishment in the District of Columbia as it did in the disciplining jurisdiction, and (2) the difference is substantial. In *re Spitzer*, 845 A.2d 1137, 2004 D.C. App. LEXIS 76 (2004).

For purposes of a reciprocal attorney disciplinary proceeding, the Board on Professional Responsibility and Court of Appeals may impose a different sanction than that imposed in original disciplining jurisdiction if the misconduct in question would not have resulted in the same punishment in District of Columbia as it did in the disciplining jurisdiction, and the difference was substantial. In *re Ellis*, 841 A.2d 1264, 2004 D.C. App. LEXIS 47 (2004).

There is a rebuttable presumption that the discipline to be imposed in a reciprocal attorney discipline proceeding will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In *re Ellis*, 841 A.2d 1264, 2004 D.C. App. LEXIS 47 (2004).

Attorney's misconduct in the federal circuit court, in failing to respond to a show cause order, which result in his contingent, indefinite suspension there, warranted substantially different discipline for purposes of reciprocal disciplinary proceedings in District of Columbia, where attorney's ultimate discipline in federal court was premised not on that circuit's substantive evaluation of attorney's ethical offenses, but on District's ultimate evaluation of discipline to be imposed. In *re Ellis*, 841 A.2d 1264, 2004 D.C. App. LEXIS 47 (2004).

Revocation of license to practice law in Virginia was functionally equivalent, and equivalent in all but name, to disbarment in District of Columbia, and thus, Court of Appeals would disbar attorneys, as reciprocal discipline for revocation of their licenses to practice in Virginia. In *re Ellis*, 841 A.2d 1264, 2004 D.C. App. LEXIS 47 (2004).

The Bar Rules create a rebuttable presumption that the reciprocal discipline imposed in the District of Columbia will be the same attorney discipline imposed in the original disciplining jurisdiction. In *re Ellis*, 841 A.2d 1264, 2004 D.C. App. LEXIS 47 (2004).

Attorney who made no effort to rebut the presumption of reciprocal discipline, effectively defaulted on the issue. In *re Powers*, 838 A.2d 311, 2003 D.C. App. LEXIS 711 (2003).

Indefinite suspension from the practice of law was warranted as reciprocal discipline following indefinite suspension by agreement in another jurisdiction; the attorney made no effort to rebut the presumption of reciprocal discipline. In *re Powers*, 838 A.2d 311, 2003 D.C. App. LEXIS 711 (2003).

A right to seek reinstatement after five years of disbarment was appropriate as reciprocal discipline despite right to seek reinstatement in the other state after only eight years. In *re*

Ain, 837 A.2d 908, 2003 D.C. App. LEXIS 698 (2003).

There is a rebuttable presumption that the sanction imposed in a reciprocal discipline case will be identical to that imposed by the original disciplining court. In *re* Dunietz, 832 A.2d 161, 2003 D.C. App. LEXIS 564 (2003).

Court of Appeals presumptively imposes identical reciprocal discipline, unless the attorney demonstrates by clear and convincing evidence that the case falls within one of five specified exceptions to reciprocal discipline. In *re* Zdravkovich, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

While the plain language of rule establishing standards for reciprocal discipline places the burden on the disciplined attorney to establish by clear and convincing evidence that a lesser sanction is warranted, the Office of Bar Counsel also has standing to object to the imposition of identical discipline and may recommend a different sanction when it believes an exception to reciprocal discipline applies; however, such instances should be rare. In *re* Zdravkovich, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

Underlying strict standard in reciprocal attorney discipline cases is not only the notion that another jurisdiction has already afforded the attorney a full disciplinary proceeding, but also the idea that there is merit in according deference, for its own sake, to the actions of other jurisdictions with respect to the attorneys over whom states share supervisory authority. In *re* Zdravkovich, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

Standard in reciprocal bar discipline proceedings comports with constitutional due process requirements because the attorney either has had an evidentiary hearing or had the right to one. In *re* Zdravkovich, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

Principles of collateral estoppel apply in reciprocal attorney discipline cases. In *re* Zdravkovich, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

Attorney who had been indefinitely suspended in Maryland was not entitled to relitigate or collaterally attack the findings or judgment of the Maryland court in connection with reciprocal disciplinary proceeding in District of Columbia. In *re* Zdravkovich, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

It was duty of attorney who had been indefinitely suspended in Maryland to prove by clear and convincing evidence that reciprocal discipline should not be imposed by District of Columbia. In *re* Zdravkovich, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

Generally, identical discipline is imposed in reciprocal attorney discipline cases. In *re* Zdravkovich, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

In reciprocal attorney discipline cases for which the original disciplining court has developed no factual record but has imposed indefinite suspension, a form of discipline District of Columbia does not employ, with no minimum period, District of Columbia court imposes indefinite suspension with the right to apply for reinstatement after being reinstated in the original jurisdiction or after five years, whichever comes first. In *re* Zdravkovich, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

When the original disciplining jurisdiction imposes indefinite suspension, a form of discipline District of Columbia does not employ, with the right to apply for reinstatement after a minimum period of time, District of Columbia courts, in reciprocal attorney discipline proceeding, views such sanctions as the functional equivalent of a suspension for the length of time before the right to reapply is allowed, coupled with a requirement of fitness. In *re* Zdravkovich, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

Attorney's reciprocal discipline suspension would not be imposed nunc pro tunc to the date on which interim order was entered suspending attorney, who had been indefinitely suspended in Maryland, in District of Columbia; at the time of oral argument, attorney still had not filed the affidavit required under disciplinary rule, no period of suspension would begin to run for reinstatement purposes until the filing of such an affidavit, and attorney had received ample notice of the affidavit requirement. In *re* Zdravkovich, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

Where attorney was indefinitely suspended in Maryland and indefinite suspension was a form of discipline District of Columbia did not employ, a fixed period of suspension constituted appropriate reciprocal discipline because Maryland had already conducted a full evidentiary hearing, and accordingly, attorney would be suspended in the District of Columbia for nine months and, after that nine month period, attorney would be required to demonstrate his fitness to practice law before reinstatement. In *re* Zdravkovich, 831 A.2d 964, 2003 D.C. App. LEXIS 548 (2003).

Engaging in the unauthorized practice of law constitutes misconduct in the District of Columbia and is grounds for disbarment in a reciprocal discipline case. In *re* Mbakpuo, 829 A.2d 217, 2003 D.C. App. LEXIS 478 (2003).

Although no reciprocal discipline would imposed for attorney's failure to pay amount owed on judgment entered for non-payment of promissory note signed in partial settlement of West Virginia malpractice action, attorney's remaining misconduct, including failing to respond to and cooperate during disciplinary investigation, warranted reciprocal discipline of 30-day

suspension. In re Swisher, 827 A.2d 807, 2003 D.C. App. LEXIS 299 (2003).

Presumption in favor of identical reciprocal discipline applied to disbar attorney, who had been disbarred in Maryland. In re Swisher, 827 A.2d 807, 2003 D.C. App. LEXIS 299 (2003).

Reciprocal disbarment was warranted against attorney who was disbarred in Maryland for intentional misappropriation, unauthorized practice of law while suspended, failing to respond to Bar Counsel's inquiries, failing to communicate with clients, failing to forward client files in a timely manner after termination, and failing to forward in a timely manner funds owed to a third party. In re Koven, 815 A.2d 770, 2003 D.C. App. LEXIS 21 (2003).

Attorney's receipt of public censure in another jurisdiction for failure to respond to numerous notices and requests for response regarding his failure to register in that jurisdiction warranted imposition of identical reciprocal discipline. In re Smith, 812 A.2d 931, 2002 D.C. App. LEXIS 743 (2002).

Reciprocal discipline could be imposed against attorney, pursuant to rule prohibiting attorneys from committing criminal act that reflected adversely on attorney's honesty, trustworthiness, or fitness as a lawyer in other respects, for his misconduct, as found by Maryland Court of Appeals, in proposing, over the Internet, to engage in sexual conduct with a child, even though Maryland Court of Appeals had determined that attorney's misconduct had violated rule prohibiting conduct prejudicial to the administration of justice, and attorney's misconduct did not fall within District of Columbia's counterpart to that rule, where attorney did not contest imposition of reciprocal discipline. In re Childress, 811 A.2d 805, 2002 D.C. App. LEXIS 674 (2002).

The Court of Appeals adheres to the principle that, in reciprocal discipline cases where neither Bar Counsel nor the attorney opposes identical discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline—a situation that the Court anticipates would rarely, if ever, present itself. In re Childress, 811 A.2d 805, 2002 D.C. App. LEXIS 674 (2002).

Attorney's conduct in Maryland in committing criminal conduct under Virginia law when, over the internet, he proposed to engage in sexual conduct with a child under the age of 14 years, warranted imposition of reciprocal discipline, specifically a one-year suspension with a fitness requirement. In re Childress, 811 A.2d 805, 2002 D.C. App. LEXIS 674 (2002).

Attorney's conduct in Kansas, in having exhibited a lack of competence and failed to

cooperate in a disciplinary investigation, which resulted in indefinite suspension, warranted imposition of reciprocal discipline, specifically a three-year suspension from practice of law with a fitness requirement. In re Cole, 809 A.2d 1226, 2002 D.C. App. LEXIS 608 (2002).

Absent attorney's participation in foreign disciplinary proceeding, Board on Professional Responsibility was required to do no more than review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline. In re Cole, 809 A.2d 1226, 2002 D.C. App. LEXIS 608 (2002).

There is a rebuttable presumption that the sanction imposed by the District of Columbia Court of Appeals in a reciprocal attorney discipline case will be identical to that imposed by the original disciplining court. In re Lippman, 806 A.2d 1224, 2002 D.C. App. LEXIS 542 (2002).

Reciprocal disbarment in the District of Columbia was the appropriate sanction for attorney who had been disbarred in New York for intentionally converting client funds to his personal use, lying under oath, and engaging in a pervasive and egregious pattern of neglecting client matters; the attorney's failure to file any exception to the Board on Professional Responsibility's report and recommendation was treated as a concession that reciprocal disbarment was warranted. In re Lippman, 806 A.2d 1224, 2002 D.C. App. LEXIS 542 (2002).

Attorney's failure to cooperate with disciplinary investigation in Maryland, for which he was publicly reprimanded, warranted reciprocal discipline of public censure in the District of Columbia. In re Bridges, 805 A.2d 233, 2002 D.C. App. LEXIS 500 (2002).

Attorney's conduct in depositing personal funds into his trust account, and bad faith filing and voluntarily dismissing multiple bankruptcy petitions and assisting his wife in doing the same in an effort to prevent the foreclosure of their residence, warranted imposition of identical reciprocal discipline, specifically, 18-month suspension from practice of law, with all but 60 days stayed. In re Schwartz, 802 A.2d 339, 2002 D.C. App. LEXIS 372 (2002).

Ninety-day suspension, followed by unsupervised probation for nine months, was appropriate discipline for attorney who had been disciplined in Ohio for misconduct stemming from conviction of four misdemeanor counts charging unauthorized access to computer systems, which indicated that attorney had revealed confidential information relating to a former client, and committed criminal acts reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer. In re Ventura, 799 A.2d 1200, 2002 D.C. App. LEXIS 302 (2002).

Court of Appeals would depart from the imposition of identical reciprocal discipline and

order disbarment for attorney's converting client's funds in estate administration case, even though foreign jurisdiction imposed a two-year suspension, as a finding of intentional misappropriation in the District of Columbia warranted such sanction. In *re Ladas*, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

Superior court's findings of fact that attorney "engaged in serious conflicts of interest over a sustained period of time resulting in personal enrichment at expense of his clients" in his civil suit for declaratory judgment against two former clients was not a permissible basis for concluding that attorney's conduct was dishonest so as to warrant reciprocal discipline in excess of that imposed by Maryland Court of Appeals, where Maryland did not find dishonesty by any standard, as that violation had yet to be established in a disciplinary procedure that included notice, an opportunity to be heard, and sufficient proof of the misconduct, and attorney did not admit to any facts regarding the violations he conceded, save only that the misconduct took place nearly 15 years earlier and was first addressed by the superior court. In *re Ladas*, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

In a reciprocal discipline case, there is a rebuttable presumption that the discipline imposed on an attorney in the District of Columbia will mirror that imposed by the original disciplining jurisdiction. In *re Ladas*, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

Attorney in reciprocal attorney disciplinary proceeding could not raise attacks against Maryland court's findings that were raised in prior Maryland disciplinary proceedings, namely that conclusions of Maryland Court of Appeals were unsupported by factual record, and that Maryland Court of Appeals defied all facts, law, and logic in straining to establish dishonesty, and knowing and intentional misappropriation, given that attorney could not attempt to re-litigate facts already determined in Maryland. In *re Ladas*, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

Appellate court's role in reciprocal discipline cases is different from that in disciplinary matters originated in jurisdiction of District of Columbia, namely first, there is no need for a *de novo* repetition of the entire process, and the burden of persuasion is reversed, and second, there is merit in the idea of granting due deference, for its sake alone, to the opinions and actions of a sister jurisdiction with respect to attorneys over whom shared supervisory authority is exercised. In *re Ladas*, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

In reciprocal attorney disciplinary matter, Court of Appeals would not disturb findings of Maryland Court of Appeals in prior disciplinary action, where Maryland court found by clear and convincing evidence that, at time he acted,

attorney knew or should have known that actions were unethical, and concluded, based on attorney's misrepresentations, that he acted dishonestly. In *re Ladas*, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

In reciprocal attorney disciplinary proceedings, when Bar Counsel, the Board of Professional Responsibility, or the attorney makes a showing that a different sanction is warranted in District of Columbia than in the original jurisdiction, the appellate court has authority under the Bar Rules to impose a greater sanction than that imposed in the other jurisdiction. In *re Ladas*, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

In reciprocal attorney disciplinary matter, to determine whether imposition of a different sanction is warranted, the Court of Appeals will undertake a two-step inquiry: (1) whether the misconduct in question would not have resulted in the same punishment here as it did in the disciplining jurisdiction, and (2) where discipline would be different, whether the difference is substantial, and in considering the first step, the Court of Appeals will examine whether the discipline imposed by the foreign jurisdiction is within the range of sanctions that would be imposed for the same misconduct in the District of Columbia. In *re Ladas*, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

In reciprocal attorney disciplinary action, disbarment was warranted sanction for misconduct involving misappropriation of client funds, even though Maryland court found that actions were not intentionally fraudulent, conduct resulted only in indefinite suspension in Maryland, attorney could apply to practice four years earlier in Maryland after suspension than in District of Columbia after disbarment, and after first misappropriation, client declared bankruptcy and no longer existed as corporate entity, given that another corporation purchased client's receivables, attorney had history of prior discipline in District of Columbia and Virginia, and Maryland lacked Addams rule, which provided that in District of Columbia, disbarment was warranted sanction for misappropriation. In *re Ladas*, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

Identical reciprocal discipline of six months suspension from practice of law in District of Columbia was warranted after attorney was disciplined in Virginia for ethical violations that occurred in Virginia which included neglecting a legal matter, failing to keep a client reasonably informed, knowingly making a false statement, and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. In *re Shelnett*, 796 A.2d 672, 2002 D.C. App. LEXIS 90 (2002).

One-year suspension, with requirement of demonstrating fitness to practice law as condition of reinstatement, was appropriate recipro-

cal discipline for attorney who had been suspended in New York for one year or until further order of that court for misconduct that included making misrepresentations to a client regarding the status of a lawsuit, engaging in a sexual relationship with the client during the course of the attorney-client relationship, preparing a will for a client designating himself as executor and guardian of the property of the client's infant son without making required disclosures regarding potential conflict of interest, and neglecting another client's criminal matter, even though District of Columbia did not have counterpart to New York disciplinary rule forbidding conduct that adversely reflects on one's fitness to practice law. In *re Alongi*, 794 A.2d 605, 2002 D.C. App. LEXIS 70 (2002).

Attorney's use of client trust account as personal bank account during his relocation from one foreign jurisdiction in which he was admitted to practice law to another foreign jurisdiction in which he was also admitted, warranted imposition of reciprocal discipline, namely, two-year suspension from practice of law, with all but 60 days stayed in favor of two years of unsupervised probation on conditions, *nunc pro tunc* to date on which attorney filed required affidavit. In *re McDonough*, 792 A.2d 245, 2002 D.C. App. LEXIS 41 (2002).

Rebuttable presumption exists in favor of identical reciprocal attorney discipline. In *re McDonough*, 792 A.2d 245, 2002 D.C. App. LEXIS 41 (2002).

Sanction of disbarment as reciprocal discipline was warranted where attorney resigned in lieu of discipline and supreme court rule governing original disciplining court treated resignation in lieu of discipline as disbarment for all purposes. In *re Ezer*, 790 A.2d 550, 2002 D.C. App. LEXIS 26 (2002).

There is a rebuttable presumption that the sanction imposed by District of Columbia court in a reciprocal attorney discipline case will be identical to that imposed by the original disciplining court. In *re Rocca*, 786 A.2d 560, 2001 D.C. App. LEXIS 250 (2001).

Disbarment, with attorney being eligible to apply for reinstatement in five years, was appropriate reciprocal discipline for attorney who was permanently disbarred in New Jersey for engaging in conduct involving fraud, deceit, dishonesty, and misrepresentation. In *re Rocca*, 786 A.2d 560, 2001 D.C. App. LEXIS 250 (2001).

One-year suspension, with requirement of demonstrating fitness to practice law as condition of reinstatement, and with right to apply for vacatur of fitness requirement if attorney was summarily reinstated to practice law in Maryland, was appropriate reciprocal discipline for attorney who had been indefinitely suspended in Maryland, with right to apply for readmission to practice in Maryland after one

year, for failing to file and pay state and federal income taxes. In *re Atkinson*, 785 A.2d 318, 2001 D.C. App. LEXIS 238 (2001).

Reciprocal (i.e., identical) discipline is imposed upon an attorney disciplined in a foreign jurisdiction unless the attorney demonstrates by clear and convincing evidence that an exception set forth in the Bar rules applies. In *re Atkinson*, 785 A.2d 318, 2001 D.C. App. LEXIS 238 (2001).

Reciprocal discipline of attorney in form of disbarment was warranted, based on disbarment issued in Maryland and attorney's failure to contest the reciprocal disciplinary action; attorney had set up an office with a Maryland lawyer and a pseudonymous assistant to furnish cover and had made false representations that he was licensed to practice in Maryland, all with the purpose to take over the inventory of pending cases of previously disbarred lawyer. In *re Atkinson*, 785 A.2d 318, 2001 D.C. App. LEXIS 238 (2001).

Reciprocal discipline will not be imposed unless an evidentiary hearing is held or waived in the foreign jurisdiction; however, once such an evidentiary hearing comporting with due process is held, there need not be another such hearing in the District of Columbia, and the attorney is entitled only to the opportunity to be heard at a non-evidentiary hearing in the District of Columbia regarding attorney's objections to reciprocal discipline. In *re Balsamo*, 780 A.2d 255, 2001 D.C. App. LEXIS 190 (2001).

Attorney's 30-day suspension by United States Court of Appeals for the District of Columbia Circuit, for failing to provide competent representation and violating disciplinary rules prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation and conduct interfering with the administration of justice, was not substantially different discipline from what would have been imposed in an original disciplinary proceeding in District of Columbia, and thus, 30-day suspension was warranted as reciprocal discipline; attorney's conduct in making misrepresentations to the federal appellate court regarding his reasons for failing to meet that court's deadlines "at least approach[ed] dishonesty." In *re Balsamo*, 780 A.2d 255, 2001 D.C. App. LEXIS 190 (2001).

Reciprocal discipline of attorney in form of public censure was warranted based on an functionally equivalent discipline of public reprimand issued in Florida, where attorney had admitted to failing to provide competent representation, failing to act with reasonable diligence and promptness in representing a client, engaging in conduct prejudicial to the administration of justice, and attempting to improperly limit his malpractice liability to a client. In *re Kirkiles*, 779 A.2d 357, 2001 D.C. App. LEXIS 177 (2001).

The resignation of an attorney in the face of disciplinary charges constitutes "discipline" within the meaning of the Bar Rules, and the Court of Appeals will impose identical discipline in such circumstances unless it finds, on the face of the record, clear and convincing evidence that one of five enumerated exceptions applies. *In re Schoeneman*, 777 A.2d 259, 2001 D.C. App. LEXIS 147 (2001).

Reciprocal attorney discipline based on attorney's resignation in another jurisdiction in which client had filed complaint with disciplinary authorities could be based only on complaint presented to attorney in course of investigation in that jurisdiction, and not on informal summary of charges sent as courtesy by Bar Counsel in that jurisdiction, as attorney asserted without contradiction that he had not seen that informal summary when he resigned. *In re Schoeneman*, 777 A.2d 259, 2001 D.C. App. LEXIS 147 (2001).

When reciprocal discipline is based on an attorney's consent to discipline in another jurisdiction, that attorney must have been apprised of the nature of the charges against him to have been afforded due process. *In re Schoeneman*, 777 A.2d 259, 2001 D.C. App. LEXIS 147 (2001).

Reciprocal discipline based on an attorney's resignation must be based only on those allegations of which the attorney had fair notice at the time of resignation. *In re Schoeneman*, 777 A.2d 259, 2001 D.C. App. LEXIS 147 (2001).

Permanent disbarment in another jurisdiction warranted reciprocal discipline of disbarment in District of Columbia. *In re Meisler*, 776 A.2d 1207, 2001 D.C. App. LEXIS 144 (2001).

In reciprocal attorney discipline cases, the presumption is that the discipline in the District of Columbia will be the same as it was in the original disciplining jurisdiction. *In re Meisler*, 776 A.2d 1207, 2001 D.C. App. LEXIS 144 (2001).

Reciprocal disbarment imposed upon attorney who was suspended following his resignation from bar in other jurisdiction would be deemed to run from date that attorney filed affidavit stating, *inter alia*, that he had informed clients and adversaries of that suspension. *In re Meisler*, 776 A.2d 1207, 2001 D.C. App. LEXIS 144 (2001).

In reciprocal disciplinary case, attorney who had been suspended in Massachusetts for three months, with the condition that he would not be permitted to apply for reinstatement until he had purged himself of contempt imposed by Vermont court in divorce action, would be suspended in District of Columbia for three months, with reinstatement conditioned upon proof of fitness to practice. *In re Kersey*, 775 A.2d 1106, 2001 D.C. App. LEXIS 186 (2001).

A fixed period of suspension is appropriate reciprocal discipline when the original disciplining

court has imposed an indefinite suspension. *In re Freed*, 773 A.2d 436, 2001 D.C. App. LEXIS 122 (2001).

Consensual 60-day suspension in Maryland for alleged professional misconduct warranted reciprocal discipline. Bar Rule XI, § 11(c). *In re George*, 726 A.2d 1237, 1999 D.C. App. LEXIS 58 (1999).

Member of District of Columbia Bar who resigns voluntarily during disciplinary proceeding in another jurisdiction is subject to discipline in District of Columbia. Bar Rule, § 11(c). *In re Gentile*, 706 A.2d 27, 1998 D.C. App. LEXIS 21 (1998).

Attorney's violation of New Jersey Rules of Professional Conduct by depositing client's advance on fees into attorney's personal account instead of attorney's trust account cannot subject attorney to reciprocal discipline in District of Columbia, since District of Columbia does not require fee advances to be deposited in trust account. Bar Rule XI, § 11(c)(5). *In re Youmans*, 588 A.2d 718, 1991 D.C. App. LEXIS 79 (1991).

Finding of Maryland disciplinary proceeding that attorney has intentionally failed to disclose material information on bar application justifying disbarment is considered in disciplinary proceeding in District of Columbia brought on basis of Maryland disbarment despite attorney's contention that actions in Maryland would not constitute misconduct in District of Columbia. *In re Gilbert*, 538 A.2d 742, 1988 D.C. App. LEXIS 235 (1988), writ of certiorari denied by 488 U.S. 828, 109 S. Ct. 80, 102 L. Ed. 2d 56, 1988 U.S. LEXIS 3777, 57 U.S.L.W. 3231 (1988).

Reinstatement.

Fitness requirement would be imposed on attorney, before attorney could be reinstated following her suspension, because her failure to participate in the disciplinary inquiry raised serious doubt over whether she would act ethically and competently in the future; attorney never responded substantively to Bar Counsel's underlying complaint, though attorney provided Bar Counsel her mother's address attorney either ignored the mail sent to that address or failed to ensure it reached her in a timely manner, attorney repeatedly failed to respond to Bar Counsel's complaint despite Bar Counsel's mailing at least five letters, ordering attorney to respond, unsuccessfully employing a process server, and eventually resorting to service by publication, and ample evidence supported findings by hearing committee that attorney had deliberately evaded service and that her telephone testimony at the hearing was not credible. *In re Lea*, 969 A.2d 881, 2009 D.C. App. LEXIS 68 (2009).

If the original disciplining jurisdiction has summarily reinstated an attorney and the Of-

fice of Bar Counsel in the District of Columbia agrees that the attorney has satisfied the criteria for reinstatement in the District of Columbia, the Court of Appeals will entertain a motion to vacate any requirement that the attorney furnish proof of fitness as a condition of reinstatement or, equivalently, a motion for expedited reinstatement without the need for a hearing and other proceedings. In *re Gonzalez*, 967 A.2d 658, 2009 D.C. App. LEXIS 48 (2009).

Disbarred attorney met his burden of proving his fitness to practice law, such that he was entitled to reinstatement to the practice of law, with condition of reporting to ensure compliance with his restitution obligation, as he had made significant efforts over previous several years to reach an offer in compromise (OIC) with the Internal Revenue Service (IRS), and IRS accepted the OIC. In *re Courtois*, 931 A.2d 1015, 2007 D.C. App. LEXIS 395 (2007).

Attorney's reinstatement following suspension for failure to cooperate in disciplinary investigations would be conditioned upon her full compliance with Bar Counsel's requests for information regarding the underlying disciplinary complaints. In *re Cater*, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

Attorney's reinstatement following suspension for failure to make reasonable efforts to ensure that conduct of non-attorney employee was compatible with her own professional obligations, facilitating employee's embezzlement of client funds, would be conditioned upon proof of reimbursement to client estates, but not upon restitution to attorney's own sureties, where attorney's contracts with her sureties were not part of record in disciplinary proceedings and sureties did not require assistance of Court of Appeals in enforcing their legal rights. In *re Cater*, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

Proof of a violation of the rules of professional conduct meriting even a substantial period of suspension is not necessarily sufficient to justify conditioning reinstatement on proof of rehabilitation. In *re Cater*, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

To justify conditioning the reinstatement of a suspended attorney on proof of rehabilitation, the record in the disciplinary proceeding must contain clear and convincing evidence that casts a serious doubt upon the attorney's continuing fitness to practice law. In *re Cater*, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

In determining whether imposition of a fitness requirement as a condition for reinstatement is justified in an attorney disciplinary proceeding, the burden of proof belongs to the proponent of the sanction, that is, Bar Counsel. In *re Cater*, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

"Clear and convincing evidence" standard was appropriate for Bar Counsel's burden of

proof in attorney disciplinary proceedings involving request for imposition of fitness requirement as a condition for reinstatement following suspension; imposition of fitness requirement depended on specific finding beyond proof of underlying violation of rules of professional conduct, and fitness requirement amounted to effective enhancement of sanction, in that it had potential to delay reinstatement for months or years beyond expiration of suspension. In *re Cater*, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

Attorney's reinstatement following suspension for failure to make reasonable efforts to ensure that conduct of non-attorney employee was compatible with her own professional obligations and failure to cooperate in disciplinary investigations would be conditioned upon proof of fitness, where evidence in disciplinary proceedings cast serious doubt upon attorney's continuing fitness to practice law; attorney failed timely to discover sizeable embezzlements by her secretary, engaged in pattern of lack of cooperation in multiple proceedings over 18-month period, not all of which was attributable to personal hardship, and failed to attend hearing rescheduled to enable her participation in proceedings. In *re Cater*, 887 A.2d 1, 2005 D.C. App. LEXIS 627 (2005).

Suspension for 30 days, with reinstatement conditioned on showing of fitness to practice, was appropriate disciplinary sanction for attorney's failure to cooperate in disciplinary proceedings, where in prior disciplinary proceeding which had involved misconduct very similar to the current misconduct, Court of Appeals had declined to require showing of fitness as condition to reinstatement but had issued a warning that attorneys must know that if they choose to willfully ignore and frustrate the efforts of Bar Counsel and Board on Professional Responsibility to obtain responses to charges of serious ethical misconduct, the consequences will be severe. In *re Steinberg*, 864 A.2d 120, 2004 D.C. App. LEXIS 685 (2004).

Court of Appeals, when rejecting attorney's fifth petition for reinstatement following his suspension, would not order that any future petition for reinstatement filed by attorney would be invalid on its face if it did not proffer certain specified evidence demonstrating his fitness to resume practicing law; such a precondition was not necessary for the Board on Professional Responsibility to have the ability to protect the disciplinary system from a frivolous or insufficient petition for reinstatement. In *re Stanton*, 860 A.2d 369, 2004 D.C. App. LEXIS 569 (2004), writ of certiorari denied by 544 U.S. 1061, 125 S. Ct. 2528, 161 L. Ed. 2d 1111, 2005 U.S. LEXIS 4384, 73 U.S.L.W. 3693 (2005).

Court of Appeals would not grant attorney's fifth petition for reinstatement following his

suspension, where the attorney did not address each of the Roundtree factors for demonstrating his fitness to resume practicing law, and instead he advocated abolishing the Board on Professional Responsibility and replacing it with a "full-time professional disciplinary fact-finding agency with members sworn to uphold the Constitution of the United States and paid from appropriations like civil officers of administrative agencies of the government." In re Stanton, 860 A.2d 369, 2004 D.C. App. LEXIS 569 (2004), writ of certiorari denied by 544 U.S. 1061, 125 S. Ct. 2528, 161 L. Ed. 2d 1111, 2005 U.S. LEXIS 4384, 73 U.S.L.W. 3693 (2005).

Evidence supported the Board of Professional Responsibility's finding that attorney's petition for reinstatement was insufficient as a matter of law; attorney failed to address the two material facts concerning attorney's recognition of the seriousness of his misconduct and attorney's conduct during his period of disbarment when attorney failed to acknowledge that his former law firm paid millions of dollars to recompense attorney's victims, that former law firm was itself a victim of attorney's misconduct, or that attorney was responsible to provide restitution to former law firm. In re Morrell, 859 A.2d 644, 2004 D.C. App. LEXIS 515 (2004).

Record supported conclusion of Board on Professional Responsibility that attorney had done little to rectify the circumstances which led to his disbarment, as required for reinstatement, considering that, in the years since disbarment, attorney's bank accounts were overdrawn frequently, he had outstanding judgments against him, and the misconduct for which attorney was disbarred was prompted by his precarious financial situation. In re Patkus, 841 A.2d 1268, 2004 D.C. App. LEXIS 50 (2004).

Attorney's petition for reinstatement as member of bar, following disbarment for intentional misappropriation of funds of a minor child for whom he was serving as guardian, would be denied, considering that the misconduct was serious, attorney had done little to rectify circumstances which led to his disbarment, and attorney was evasive on reinstatement questionnaire and failed to take any continuing legal education (CLE) courses since year of his disbarment. In re Patkus, 841 A.2d 1268, 2004 D.C. App. LEXIS 50 (2004).

Five factors to be considered in an attorney reinstatement case include: (1) nature and circumstances of misconduct for which attorney was disciplined; (2) whether attorney recognizes seriousness of misconduct; (3) attorney's conduct since discipline was imposed, including steps taken to remedy past wrongs and prevent future ones; (4) attorney's present character; and (5) attorney's present qualifications and competence to practice law. In re Patkus, 841 A.2d 1268, 2004 D.C. App. LEXIS 50 (2004).

While the Board on Professional Responsibility's recommendation is entitled to great weight, the ultimate decision of whether an attorney should be reinstated rests with the Court of Appeals. In re Patkus, 841 A.2d 1268, 2004 D.C. App. LEXIS 50 (2004).

Review of the Board on Professional Responsibility's recommendation concerning reinstatement as member of the bar is especially deferential where neither the attorney petitioner nor Bar Counsel filed objections or exceptions to Board's report in Court of Appeals. In re Patkus, 841 A.2d 1268, 2004 D.C. App. LEXIS 50 (2004).

Remand.

Remand of reciprocal attorney disciplinary proceeding was required for Board on Professional Responsibility to conduct greater factual inquiry to determine whether substantially different discipline was warranted; while court in Virginia ordered five-year suspension of attorney's license to practice law after finding that attorney had been charged with being drunk in public and driving while intoxicated, the court made no finding that the underlying conduct had in fact occurred, and while the court found that attorney had a long history of filing civil actions against numerous and various defendants on grounds that were of questionable merit, the court did not say that the civil actions were frivolous, malicious, or filed for purposes of harassment. In re Ditton, 954 A.2d 986, 2008 D.C. App. LEXIS 370 (2008).

Review.

Court of Appeals afforded heightened deference to report and recommendation of Board on Professional Responsibility in attorney disciplinary proceedings, where no exception was taken to such report and recommendation. In re Wilson, 953 A.2d 1052, 2008 D.C. App. LEXIS 356 (2008).

The Court of Appeals adheres to the principle that, in reciprocal discipline cases where neither Bar Counsel nor the attorney opposes identical discipline, the most the Board on Professional Responsibility should consider itself obliged to do is to review the foreign proceeding sufficiently to satisfy itself that no obvious miscarriage of justice would result in the imposition of identical discipline—a situation that the Court anticipates would rarely, if ever, present itself. In re Wilson, 953 A.2d 1052, 2008 D.C. App. LEXIS 356 (2008).

Where neither Bar Counsel nor attorney has filed any exceptions to report and recommendation of Board on Professional Responsibility in attorney disciplinary proceeding, Court of Appeals gives great deference to Board's recommendation. In re Maignan, 942 A.2d 1115, 2007 D.C. App. LEXIS 658 (2007).

If no exception has been taken to the report and recommendation of the Board on Professional Responsibility in an attorney disciplinary proceeding, the Court of Appeals gives heightened deference to the Board's recommendation. In *re Richardson*, 935 A.2d 1076, 2007 D.C. App. LEXIS 657 (2007).

In attorney disciplinary cases, the Court of Appeals reviews the Board of Professional Responsibility's conclusions of law *de novo*. In *re Cleaver-Bascombe*, 892 A.2d 396, 2006 D.C. App. LEXIS 29 (2006).

Substantial evidence in attorney disciplinary proceedings supported findings of the Board on Professional Responsibility that attorney neglected cases of three clients before United States District Court, misled them and lied to them as to status of their cases, and concealed from them his suspension from practice. In *re Schoeneman*, 891 A.2d 279, 2006 D.C. App. LEXIS 19 (2006).

If neither the attorney nor Bar Counsel files objections or exceptions to the Board on Professional Responsibility's report in the attorney disciplinary proceeding, review of the Board's recommendation, by the Court of Appeals, is especially deferential. In *re Ponds*, 888 A.2d 234, 2005 D.C. App. LEXIS 642 (2005).

Just as in an appeal from a trial court or an administrative agency, an attorney disciplinary proceeding before the Court of Appeals is not the appropriate occasion to raise an issue for the first time. In *re Ponds*, 888 A.2d 234, 2005 D.C. App. LEXIS 642 (2005).

Court of Appeals in disciplinary proceedings would consider attorney's claim that was entitled to object to questions posed in Bar Counsel's interrogatories or to assert his Fifth Amendment privilege during disciplinary investigation, even though attorney failed to raise claim when Bar Counsel filed motion to compel responses; Board on Professional Responsibility was given opportunity to consider issue in first instance, matter was one of first impression, and problematic interrogatories raised issue of how an objection to the questions should be raised. In *re Artis*, 883 A.2d 85, 2005 D.C. App. LEXIS 473 (2005).

Attorney who fails to present an issue to the Board on Professional Responsibility in attorney discipline proceedings waives it and cannot present it for the first time in Court of Appeals. In *re Artis*, 883 A.2d 85, 2005 D.C. App. LEXIS 473 (2005).

In deciding whether to accept the recommended sanction of Board on Professional Responsibility for attorney's violations of disciplinary rules, Court of Appeals considers the nature of the violation, prior disciplinary sanctions, mitigating and aggravating circumstances, protection of the public, courts and the legal profession, and, to the extent it can be determined, the moral fitness of the attorney.

In *re Artis*, 883 A.2d 85, 2005 D.C. App. LEXIS 473 (2005).

The system of attorney discipline, including the imposition of sanctions, is the responsibility and duty of the Court of Appeals. In *re Bingham*, 881 A.2d 619, 2005 D.C. App. LEXIS 460 (2005).

In deciding whether to adopt the Board on Professional Responsibility's sanction recommendation, in an attorney disciplinary case, the Court of Appeals must examine the nature of the violation, aggravating and mitigating circumstances, the absence or presence of prior disciplinary sanctions, the moral fitness of the attorney, and the need to protect the legal profession, the courts, and the public. In *re Bingham*, 881 A.2d 619, 2005 D.C. App. LEXIS 460 (2005).

When the Court of Appeals disagrees with the Board on Professional Responsibility as to the seriousness of the attorney disciplinary offense the Board's recommendations are accordingly granted less weight. In *re Bingham*, 881 A.2d 619, 2005 D.C. App. LEXIS 460 (2005).

So long as the Board on Professional Responsibility's disciplinary sanction recommendation falls within the wide range of acceptable outcomes, it comes to the Court of Appeals with a strong presumption in favor of its imposition, unless to do so would foster a tendency towards inconsistent dispositions. In *re Bingham*, 881 A.2d 619, 2005 D.C. App. LEXIS 460 (2005).

Court of Appeals will accept the findings of the Board on Professional Responsibility as long as they are supported by substantial evidence in the record. In *re Steinberg*, 878 A.2d 496, 2005 D.C. App. LEXIS 337 (2005).

Review of recommendation made by Board of Professional Responsibility is especially deferential and limited in circumstances where attorney and Bar Counsel consent to recommendation. In *re Steinberg*, 878 A.2d 496, 2005 D.C. App. LEXIS 337 (2005).

Attorney's challenges on appeal to procedures of Hearing Committee were procedurally barred, where attorney failed to raise such challenges before Board on Professional Responsibility and challenged procedures did not result in substantial prejudice. In *re Thyden*, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Bar disciplinary system's findings and recommendations should not be set aside without good cause. In *re Thyden*, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Court of Appeals would decline to attempt to fashion disciplinary sanction functionally equivalent to indefinite suspension imposed by original disciplining court, where disbarment was normal sanction in District of Columbia for intentional misrepresentations during bar admission application process to degree displayed

by attorney. In *re Demos*, 875 A.2d 636, 2005 D.C. App. LEXIS 262 (2005).

Appropriate question for Court of Appeals to address, in determining appropriateness of sanction of disbarment in reciprocal attorney disciplinary proceedings, where original disciplining court imposed lesser sanction of striking attorney from its roll of attorneys, was not whether bar counsel would have sought disbarment for attorney's misconduct if it had originally occurred in District of Columbia, but whether original discipline elsewhere was within range of sanctions possible in District of Columbia. In *re Demos*, 875 A.2d 636, 2005 D.C. App. LEXIS 262 (2005).

On review of recommendation of Board on Professional Responsibility in reciprocal attorney discipline proceeding, Court of Appeals was obligated at least to satisfy itself that no obvious miscarriage of justice would result from imposition of recommended sanction of disbarment, despite attorney's failure to participate in proceedings before Board, where disbarment was greater sanction than that imposed by original disciplining court. In *re Demos*, 875 A.2d 636, 2005 D.C. App. LEXIS 262 (2005).

Court of Appeals' review of report and recommendation of Board on Professional Responsibility in connection with suspended attorney's petition for reinstatement was especially deferential, where neither bar counsel nor petitioning attorney filed exceptions to such report and recommendation. In *re Richardson*, 874 A.2d 361, 2005 D.C. App. LEXIS 210 (2005).

Court of Appeals' review in uncontested attorney disciplinary cases is limited, and the presumption is in favor of identical reciprocal discipline. In *re Harris-Smith*, 871 A.2d 1183, 2005 D.C. App. LEXIS 156 (2005).

Having asked the Board on Professional Responsibility to disregard her depression in disciplinary case, attorney could not complain on appeal that Board abided by her request. In *re Edwards*, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

The ultimate issue in attorney discipline case, namely whether a particular sanction is warranted, requires Court of Appeals to consider the individual qualifications and fitness of the attorney whose case is before Court and, especially, the paramount need to protect the public, the courts, and the legal profession. In *re Edwards*, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

To ensure that Court of Appeals reaches consistent dispositions in determining appropriate sanction in attorney discipline cases, Court necessarily compares the instant case with prior cases in terms of the misconduct at issue, the attorney's disciplinary history, and any legitimate mitigating or aggravating circumstances. In *re Edwards*, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

The Court of Appeals standard of review in an attorney disciplinary case is a deferential one. In *re Edwards*, 870 A.2d 90, 2005 D.C. App. LEXIS 55 (2005).

The Court of Appeals' review in uncontested attorney disciplinary cases is limited, and the presumption is in favor of identical reciprocal discipline. In *re McGann*, 863 A.2d 864, 2004 D.C. App. LEXIS 682 (2004).

Since attorney failed to respond to the show cause order or participate in the reciprocal disciplinary proceedings before the Board on Professional Responsibility, attorney, who was disbarred in Maryland for the unauthorized practice of law, could not challenge the imposition of reciprocal disbarment unless he could meet the "demanding" miscarriage of justice standard. In *re Barneys*, 861 A.2d 1270, 2004 D.C. App. LEXIS 619 (2004).

The Court of Appeals is bound—as is the Board on Professional Responsibility—by the hearing committee's finding of fact in an attorney discipline case. In *re Austin*, 858 A.2d 969, 2004 D.C. App. LEXIS 432 (2004).

To determine what discipline is appropriate under the circumstances, the Court of Appeals reviews the attorney's violations in light of the nature of the violation, the mitigating and aggravating circumstances, the need to protect the public, the courts, and the legal profession, and the moral fitness of the attorney. In *re Austin*, 858 A.2d 969, 2004 D.C. App. LEXIS 432 (2004).

Ultimately, the system of attorney discipline, including the imposition of sanctions, is the responsibility and duty of the Court of Appeals. In *re Austin*, 858 A.2d 969, 2004 D.C. App. LEXIS 432 (2004).

When the Court of Appeals disagrees with the Board on Professional Responsibility as to the seriousness of the offense or the demands of consistency, the Board's recommendations are accordingly granted less weight. In *re Austin*, 858 A.2d 969, 2004 D.C. App. LEXIS 432 (2004).

Faced with varying recommendations for disposition of attorney discipline proceedings, the imposition of sanction is for the Supreme Court. In *re Kitchings*, 857 A.2d 1059, 2004 D.C. App. LEXIS 397 (2004).

Attorney who was subject of disciplinary proceeding did not preserve for appeal argument that Hearing Committee erred in permitting a witness to testify via telephone from a foreign country, where nothing in record indicated that attorney raised argument to Board on Professional Responsibility, and attorney was given a full opportunity to refute the evidence. In *re Rivlin*, 856 A.2d 1086, 2004 D.C. App. LEXIS 409 (2004).

In attorney disciplinary proceeding, Court of Appeals is required to accept the findings of fact made by the Board on Professional Responsibility.

bility unless they are unsupported by substantial evidence of record, and shall adopt the recommended disposition of the Board unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Rivlin, 856 A.2d 1086, 2004 D.C. App. LEXIS 409 (2004).

The weight that the Court of Appeals accords to the Board on Professional Responsibility's (BPR) recommendation is even greater where neither Bar Counsel nor the attorney has excepted to it. In re Brown, 845 A.2d 519, 2004 D.C. App. LEXIS 74 (2004).

In determining whether a recommended attorney disciplinary sanction is appropriate, the Court of Appeals must consider the purpose served by Bar discipline, which is to protect the public, the courts, and the legal profession. In re Laibstain, 841 A.2d 1259, 2004 D.C. App. LEXIS 49 (2004).

Imposing reciprocal discipline based on default judgment against attorney who failed to participate in the proceedings in another state required the Court of Appeals to satisfy itself that the attorney was afforded due process and that she received actual notice prior to the imposition of the sanction. In re Ain, 837 A.2d 908, 2003 D.C. App. LEXIS 698 (2003).

Attorney waived for appellate review claim that public censure should not have been imposed against him as reciprocal discipline, where he failed to present the claim to the Board on Professional Responsibility. In re Holdmann, 834 A.2d 887, 2003 D.C. App. LEXIS 631 (2003).

Although the ultimate choice of an attorney disciplinary sanction rests with the Court of Appeals, the Court is obliged to respect the Board on Professional Responsibility's sense of equity in such matters unless that exercise of judgment proves to be unreasonable. In re Clower, 831 A.2d 1030, 2003 D.C. App. LEXIS 555 (2003).

Just as in an appeal from a trial court or an administrative agency, attorney disciplinary proceeding before Court of Appeals is not the appropriate occasion to raise an issue for the first time. In re Clower, 831 A.2d 1030, 2003 D.C. App. LEXIS 555 (2003).

Court of Appeals did not need to consider attorney's claim that his reciprocal discipline suspension should have been imposed *nunc pro tunc* to the date on which interim order was entered suspending attorney, who had been indefinitely suspended in Maryland, in District of Columbia since this argument was raised for the first time at oral argument. In re Clower, 831 A.2d 1030, 2003 D.C. App. LEXIS 555 (2003).

When considering a recommended disciplinary sanction against an attorney, Court of Appeals will accept the findings of fact of the

Board on Professional Responsibility if they are supported by substantial evidence. In re Clower, 831 A.2d 1030, 2003 D.C. App. LEXIS 555 (2003).

When considering a recommended disciplinary sanction against an attorney, Court of Appeals will adopt the recommended sanction of the Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Clower, 831 A.2d 1030, 2003 D.C. App. LEXIS 555 (2003).

In attorney disciplinary case, Court of Appeals will review *de novo* any Board on Professional Responsibility determination of moral turpitude, since the ultimate issue of moral turpitude is one of law, rather than of fact. In re Clower, 831 A.2d 1030, 2003 D.C. App. LEXIS 555 (2003).

In disciplinary cases, Court of Appeals must accept the findings of the Board on Professional Responsibility unless they are unsupported by substantial evidence. In re Clower, 831 A.2d 1030, 2003 D.C. App. LEXIS 555 (2003).

In an attorney disciplinary matter, the Court of Appeals accepts the findings of fact made by the Board on Professional Responsibility unless they are unsupported by substantial evidence of record, and will adopt the recommendations of the Board unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Clower, 831 A.2d 1030, 2003 D.C. App. LEXIS 555 (2003).

The Board on Professional Responsibility's recommended sanction in an attorney disciplinary matter comes to the Court of Appeals with a strong presumption in favor of its imposition. In re Clower, 831 A.2d 1030, 2003 D.C. App. LEXIS 555 (2003).

The Board on Professional Responsibility's recommended sanction in an attorney disciplinary matter comes to the Court of Appeals with a strong presumption in favor of its imposition. In re Clower, 831 A.2d 1030, 2003 D.C. App. LEXIS 555 (2003).

Generally speaking, if the Board on Professional Responsibility's recommended sanction in an attorney disciplinary matter falls within a wide range of acceptable outcomes, it will be adopted by the Court of Appeals and imposed. In re Clower, 831 A.2d 1030, 2003 D.C. App. LEXIS 555 (2003).

Court of Appeals would impose the discipline of disbarment recommended by the Board of Professional Responsibility on attorney who had been suspended from the practice of law by the State of Florida, where attorney did not file a brief opposing the Board's recommendation; review of a Board's report was deferential when the attorney bypassed the opportunity to iden-

tify and brief issues. In re Hest, 825 A.2d 301, 2003 D.C. App. LEXIS 294 (2003).

Court of Appeals is required in attorney disciplinary proceeding to adopt the sanction recommended by Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Hager, 812 A.2d 904, 2002 D.C. App. LEXIS 724 (2002).

Appellate court would decline, in imposing one-year suspension on attorney for ethical violations in connection with settlement reached with manufacturer on potential class-action claims, to order disgorgement of \$125,000 payment of fees and expenses that attorney and co-counsel received from manufacturer, but would defer action on disgorgement issue until time of reinstatement; record did not indicate amount of fee that attorney personally received and was inadequate to resolve whether attorney was entitled to reasonable fee for work done prior to his unethical conduct or to determine who the proper recipients of disgorged fee should be. In re Hager, 812 A.2d 904, 2002 D.C. App. LEXIS 724 (2002).

After the Court of Appeals concluded that evidence did not support findings of misappropriation with respect to three of four clients involved in attorney discipline case, it was appropriate to remand matter to the Board on Professional Responsibility for further proceedings on issue of attorney's recklessness and a new recommendation as to the appropriate sanction, where Board had noted that case was an "extremely difficult" one when it originally recommended disbarment and had emphasized the extensive nature of attorney's violations, and Board's finding of recklessness had been largely based on what Board deemed "an extensive pattern of misappropriation." In re Edwards, 808 A.2d 476, 2002 D.C. App. LEXIS 546 (2002).

In an attorney disciplinary proceeding, the Court of Appeals will impose the sanction recommended by the Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Owens, 806 A.2d 1230, 2002 D.C. App. LEXIS 535 (2002).

The Court of Appeals would give heightened deference to findings and recommendations of the Board on Professional Responsibility, where neither bar counsel nor the attorney who is the subject of the disciplinary proceedings has opposed the Board's report and recommendation. In re Owens, 806 A.2d 1230, 2002 D.C. App. LEXIS 535 (2002).

Court of Appeals' scope of review is very limited when an attorney effectively concedes reciprocal discipline is warranted and the

Board on Professional Responsibility's proposed sanction is appropriate, which occurs when attorney does not participate in any stage of the disciplinary proceedings and does not file an opposition to the Board's report or recommendation. In re Ladas, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

Appellate court will defer to findings of fact made by other courts in reciprocal attorney disciplinary proceedings. In re Ladas, 798 A.2d 1067, 2002 D.C. App. LEXIS 112 (2002).

The Court of Appeals' deference to the attorney disciplinary recommendation of Board on Professional Responsibility is heightened where neither Bar Counsel nor the attorney opposes it. In re Graham, 795 A.2d 51, 2002 D.C. App. LEXIS 69 (2002).

When the Court of Appeals reviews a recommended sanction against an attorney, it accepts the findings of fact of the Board on Professional Responsibility if they are supported by substantial evidence in the record. In re Davenport, 794 A.2d 602, 2002 D.C. App. LEXIS 68 (2002).

When the Court of Appeals reviews a recommended sanction against an attorney, it is required to adopt the recommended disposition of the Board on Professional Responsibility unless to do so would foster a tendency towards inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In re Davenport, 794 A.2d 602, 2002 D.C. App. LEXIS 68 (2002).

Court of Appeals gives heightened deference to the Board on Professional Responsibility when its recommendation for attorney discipline is unopposed. In re McDonough, 792 A.2d 245, 2002 D.C. App. LEXIS 41 (2002).

Deferential standard mandated by the Bar Rule provision that the Court of Appeals should adopt the recommended discipline of the Board of Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted, becomes even more deferential where the attorney has failed to contest the proposed sanction. In re Bewig, 791 A.2d 908, 2002 D.C. App. LEXIS 34 (2002).

Deference by Court of Appeals to the Board on Professional Responsibility is heightened where neither Bar Counsel nor attorney subject to disciplinary proceeding opposes the Board's report and recommendation. In re Mattingly, 790 A.2d 579, 2002 D.C. App. LEXIS 24 (2002).

The deferential standard mandated by bar rule governing review of recommendations by Board of Professional Responsibility becomes even more deferential where the attorney has failed to contest the proposed sanction. In re Mattingly, 790 A.2d 579, 2002 D.C. App. LEXIS 24 (2002).

Where neither Bar Counsel nor the attorney had excepted to the recommendation of the

Board on Professional Responsibility regarding the sanction in a reciprocal discipline case, the Court of Appeals' review was highly deferential. In *re Atkinson*, 785 A.2d 318, 2001 D.C. App. LEXIS 238 (2001).

The test of "an obvious miscarriage of justice" defines the scope of review which both the Board on Professional Responsibility and the court apply to foreign discipline not opposed at the Board level. In *re Atkinson*, 785 A.2d 318, 2001 D.C. App. LEXIS 238 (2001).

The Court of Appeals' deference to the sanction recommended by the Board on Professional Responsibility is heightened where neither Bar Counsel nor the attorney opposes the Board's recommendation. In *re Soininen*, 783 A.2d 619, 2001 D.C. App. LEXIS 228 (2001).

Ultimately, the decision as to sanction for attorney misconduct is the responsibility and duty of the Court of Appeals. In *re Fair*, 780 A.2d 1106, 2001 D.C. App. LEXIS 200 (2001).

Bar Counsel's error in failing to obtain preapproval from Board on Professional Responsibility contact members before urging hearing committee to "dismiss" disciplinary charges in attorney's second stipulation was harmless, where the contact members reviewing the second stipulation directed Bar Counsel to prosecute the 12 charges it contained, and Bar Counsel had essentially prosecuted the 12 charges when presenting to the committee the stipulation recommending that the 12 stipulated violations be considered in aggravation of the sanction for the three violations contained in the first stipulation. In *re Kitchings*, 779 A.2d 926, 2001 D.C. App. LEXIS 188 (2001).

Bar Counsel's failure to follow its own rules and regulations is "harmless error" if that error had no effect on the outcome of the disciplinary proceeding. In *re Kitchings*, 779 A.2d 926, 2001 D.C. App. LEXIS 188 (2001).

The Court of Appeals is the ultimate sanctioning authority. In *re Kitchings*, 779 A.2d 926, 2001 D.C. App. LEXIS 188 (2001).

Hearing committee's failure to make explicit findings of fact regarding its conclusion that attorney's stipulation with Bar Counsel was not the product of duress was not reversible error; sole purpose of one of committee's hearings was to explore the duress issue, and committee's reference to attorney's stipulations as "the accepted facts of the case" left no doubt that the committee implicitly found attorney's signature to be voluntary. In *re Kitchings*, 779 A.2d 926, 2001 D.C. App. LEXIS 188 (2001).

The deferential standard given to recommendations by the Board on Professional Responsibility in attorney disciplinary cases becomes even more deferential where no exception is taken to the recommendation. In *re Meisler*, 776 A.2d 1207, 2001 D.C. App. LEXIS 144 (2001).

The Court of Appeals accepts the findings of the Board on Professional Responsibility as long as they are supported by substantial evidence in the record. In *re Shaw*, 775 A.2d 1123, 2001 D.C. App. LEXIS 142 (2001).

The Court of Appeals imposes the sanction recommended by the Board on Professional Responsibility unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted. In *re Shaw*, 775 A.2d 1123, 2001 D.C. App. LEXIS 142 (2001).

The Board on Professional Responsibility's recommended attorney discipline comes to the Court of Appeals with a strong presumption in favor of its imposition; generally speaking, if the Board's recommended sanction falls within a wide range of acceptable outcomes, it will be adopted and imposed. In *re Shaw*, 775 A.2d 1123, 2001 D.C. App. LEXIS 142 (2001).

Court of Appeals deferentially reviews the Board on Professional Responsibility's proposed disposition of an attorney discipline case. In *re Gonzalez*, 773 A.2d 1026, 2001 D.C. App. LEXIS 124 (2001).

While Court of Appeals and Board on Professional Responsibility, in attorney discipline cases, are required to defer to the Hearing Committee's findings of evidentiary or subsidiary facts, no such deference is owed to Committee's determinations of ultimate facts, which implicate conclusions of law. In *re Gonzalez*, 773 A.2d 1026, 2001 D.C. App. LEXIS 124 (2001).

Hearing Committee's views as to purpose of Virginia's disciplinary rule proscribing disclosure of clients' secrets and type of information that constituted a "secret" under that rule were not issues of evidentiary fact; accordingly, Board on Professional Responsibility owed no deference to Committee's determinations on those issues. In *re Gonzalez*, 773 A.2d 1026, 2001 D.C. App. LEXIS 124 (2001).

Board on Professional Responsibility's exercise of broad discretion in handing out attorney discipline is subject only to a general review for abuse in that discretion's exercise. In *re Lopes*, 770 A.2d 561, 2001 D.C. App. LEXIS 92 (2001).

The Board on Professional Responsibility's recommended discipline comes to the Court of Appeals with a strong presumption in favor of its imposition. In *re Lopes*, 770 A.2d 561, 2001 D.C. App. LEXIS 92 (2001).

In general, if the Board on Professional Responsibility's recommended sanction falls within a wide range of acceptable outcomes, it will be adopted and imposed. In *re Lopes*, 770 A.2d 561, 2001 D.C. App. LEXIS 92 (2001).

Court of Appeals' determination, in attorney's appeal of probate court's judgment requiring attorney to return to the estate attorney fees that the attorney had accepted without filing a petition for such fees with the probate

court, that attorney had been performing services for the estate, collaterally estopped attorney, in a subsequent disciplinary proceeding in which he was charged with collecting an illegal fee, from contending that he had not been performing services for the estate. In *re Travers*, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

The Court of Appeals generally defers to the Board on Professional Responsibility's sense of justice and its recommended sanction. In *re Travers*, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

In deciding whether a sanction is appropriate, the Court of Appeals considers a variety of factors, including the nature of the violation, aggravating and mitigating circumstances, the absence or presence of prior disciplinary sanctions, the moral fitness of the attorney, and the need to protect the legal profession, the courts, and the public. In *re Travers*, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

The Court of Appeals, when deciding whether a sanction is appropriate, normally evaluates each case on its particular facts, taking into consideration such factors as mitigating and aggravating circumstances. In *re Travers*, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

District of Columbia Court of Appeals reviews de novo any Board on Professional Responsibility determination of moral turpitude, as ultimate issue is one of law rather than fact. In *re Kerr*, 611 A.2d 551, 1992 D.C. App. LEXIS 205 (1992).

Court of Appeals should be prepared in disciplinary cases, more readily than in other types of proceedings, to reexamine whether prior statutory interpretations accord with legislative intent; Board on Professional Responsibility and Court of Appeals have broad supervisory powers over attorney discipline, and thus joint function is similar to that of administrative agency construing its enabling statute. D.C. Code 1981, §§ 11-2501(a), 11-2502. In *re McBride*, 602 A.2d 626, 1992 D.C. App. LEXIS 15 (1992).

District of Columbia Court of Appeals' standard of review in disciplinary cases is virtually the same as that which it is to exercise under District of Columbia Administrative Procedure Act. D.C. Code § 1-1510(3)(E). In *re Dwyer*, 399 A.2d 1, 1979 D.C. App. LEXIS 314 (1979).

Suspension.

Attorney who failed to provide competent, zealous, and diligent representation, who did not act promptly and communicate adequately with clients or maintain records on client funds or protect their interests after he was discharged, who did not supervise firm's other lawyers or nonlawyers and assure their compliance with Rules of Professional Conduct, who made false statements to a tribunal and in

disciplinary matter, who engaged in conduct involving dishonesty, fraud, deceit, and misrepresentation, who did not withdraw from representation when it resulted in violation of law, and who continued to practice after being suspended, would be suspended for one year. In *re Toppelberg*, 966 A.2d 852, 2009 D.C. App. LEXIS 45 (2009).

Attorney was ineligible for nunc pro tunc treatment of her suspension from date of imposition of discipline in Delaware, where Delaware court, acting as attorney's agent, failed to inform Bar Counsel that attorney was admitted to practice under a different name in District of Columbia, attorney knew or should have known that she was admitted to practice under different names in the two jurisdictions, and attorney did not hear anything from the District of Columbia bar concerning her disciplinary case for significant period of time, despite having been notified of disciplinary investigations in other jurisdictions in which she was admitted. In *re Ayres-Fountain*, 955 A.2d 157, 2008 D.C. App. LEXIS 365 (2008).

The temporary suspension of an attorney pending the completion of disciplinary proceedings has the same effect as a preliminary injunction barring the attorney from the practice of law. In *re Downey*, 960 A.2d 1135, 2008 D.C. App. LEXIS 475 (2008), amended by 975 A.2d 152, 2009 D.C. App. LEXIS 233 (D.C. 2009).

Good cause existed to stay or set aside order to temporarily suspend an attorney after his guilty plea to the "serious crime" of engaging in business of money transmission without a license, a felony; attorney's record was unblemished, offense involved no scienter or moral turpitude, violation arose outside his normal practice, risk of harm to public from permitting him to practice in interim was low, it was possible that an interim suspension might exceed sanction for the offense itself, and suspension would harm attorney's ability to support his family. In *re Downey*, 960 A.2d 1135, 2008 D.C. App. LEXIS 475 (2008), amended by 975 A.2d 152, 2009 D.C. App. LEXIS 233 (D.C. 2009).

Suspension from practice of law for 90 days, stayed in favor of two years probation, was appropriate reciprocal sanction for attorney's admission to having submitted falsified travel expense reports to his law firm, which resulted in 90-day suspension in Colorado. In *re Wittenberg*, 945 A.2d 615, 2008 D.C. App. LEXIS 124 (2008).

Sanction of 120-day suspension from practice of law, with reinstatement conditioned on full compliance and proof of fitness to practice law was appropriate, in connection with attorney's failure to respond to repeated inquiries from bar counsel and to compliance orders from Board on Professional Responsibility in connection with ethical complaints, where such sanc-

tion was not inconsistent with discipline imposed in similar cases. In *re* Wittenberg, 945 A.2d 615, 2008 D.C. App. LEXIS 124 (2008).

Eighteen-month suspension from the practice of law was warranted for attorney's misconduct during child support hearing, in submitting altered checks to hearing court and making false statements to the court claiming he made more payments than he actually had. In *re* Mayers, 943 A.2d 1170, 2008 D.C. App. LEXIS 102 (2008).

Suspension from practice of law for 30 days, with reinstatement conditioned on fitness to resume practice and full compliance with subpoena for information related to trust account, was appropriate sanction for attorney's failure to respond to requests for information and subsequent refusal to comply with subpoena and to attend hearing, in violation of Bar Rules and Rules of Professional Conduct. In *re* Cooper, 936 A.2d 832, 2007 D.C. App. LEXIS 672 (2007).

Attorney's misconduct while practicing law in other state in which he was licensed, in failing to return unearned fees to client or cooperate and participate in disciplinary investigation or proceeding, warranted identical discipline that was imposed in other state, which was a one-year suspension from practice of law. In *re* Christenson, 940 A.2d 84, 2007 D.C. App. LEXIS 661 (2007).

Nine-month suspension from practice of law, with three months stayed, and two years of probation was appropriate sanction for attorney's admitted misconduct of allowing nonlawyer employee to negotiate settlement for client family's claims without consulting clients and placement of settlement funds in attorney's trust account, which account later fell below amount of settlement, in violation of numerous rules of professional responsibility, including rules requiring attorney to provide competent representation, and to communicate adequately with client, and rule governing trust account recordkeeping. In *re* Herbst, 931 A.2d 1016, 2007 D.C. App. LEXIS 474 (2007).

For purposes of nunc pro tunc treatment of attorney's suspension in reciprocal disciplinary proceedings, attorney's suspension in District of Columbia would not be deemed to have begun until attorney filed supplemental affidavit suggested by Board on Professional Responsibility, making clear whom he notified of his suspension, that he had no private clients to notify, or, if he did have any clients, that he had notified them, as well as adverse parties, and that he had returned any client property. In *re* Stuart, 942 A.2d 1118, 2008 D.C. App. LEXIS 23 (2008).

For purposes of reinstatement, effective date of 60-day suspension from practice of law imposed on attorney would begin from time he filed affidavit fully compliant with bar rule requiring him to file affidavit containing required information regarding other jurisdictions in which he was licensed to practice and indicating steps taken to advise clients and adversaries of his suspended status. In *re* Sobo, 905 A.2d 158, 2006 D.C. App. LEXIS 434 (2006).

Conduct of attorney, who represented borrower in probate proceeding after he learned that borrower in transaction attorney's title company was contacted to close did not own property, in violating rules of professional conduct on competent representation, skill and care, conflict of interest and conduct that seriously interfered with the administration of justice, warranted suspension of attorney for six months; attorney's conflict of interest was the core of his misconduct and arose from his self-interest in closing transaction, attorney had previously been suspended for six months for taking a fee from an estate without proper authorization, attorney while representing borrower again took a fee from an estate without proper authorization, attorney's misconduct prejudiced borrower, attorney failed to acknowledge any wrongdoing, and six-month suspension was not inconsistent with range of discipline imposed in similar cases. In *re* Evans, 902 A.2d 56, 2006 D.C. App. LEXIS 201 (2006).

Attorney's neglect of cases of three clients before United States District Court, his actions in misleading them and lying to them as to status of their cases, his concealment from them of his suspension from practice, and his unauthorized practice of law, warranted four-month suspension from practice of law, as recommended by Board on Professional Responsibility, in light of unwarranted temporary suspension previously imposed. In *re* Schoeneman, 891 A.2d 279, 2006 D.C. App. LEXIS 19 (2006).

Suspension for 30 days, with requirement that attorney undergo ethical training as condition to reinstatement, was appropriate disciplinary sanction for attorney's conflict of interest, in violation of Maryland professional conduct rules which were applicable in District of Columbia disciplinary proceeding, in continuing to represent client after client had filed motion to withdraw his guilty plea in prosecution in Maryland federal court, where there was five-year delay in disciplinary proceeding and where during that period of delay attorney was publicly censured in District for new misconduct in Maryland. In *re* Ponds, 888 A.2d 234, 2005 D.C. App. LEXIS 642 (2005).

§ 11-2503. Disbarment upon conviction of crime; procedure for censure, suspension, or disbarment.

(a) When a member of the bar of the District of Columbia Court of Appeals is convicted of an offense involving moral turpitude, and a certified copy of the conviction is presented to the court, the court shall, pending final determination of an appeal from the conviction, suspend the member of the bar from practice. Upon reversal of the conviction the court may vacate or modify the suspension. If a final judgment of conviction is certified to the court, the name of the member of the bar so convicted shall be struck from the roll of the members of the bar and such person shall thereafter cease to be a member. Upon the granting of a pardon to a member so convicted, the court may vacate or modify the order of disbarment.

(b) Except as provided in subsection (a), a member of the bar may not be censured, suspended, or expelled under this chapter until written charges, under oath, against that member have been presented to the court, stating distinctly the grounds of complaint. The court may order the charges to be filed in the office of the clerk of the court and shall fix a time for hearing thereon. Thereupon a certified copy of the charges and order shall be served upon the member personally, or if it is established to the satisfaction of the court that personal service cannot be had, a certified copy of the charges and order shall be served upon that member by mail, publication, or otherwise as the court directs. After the filing of the written charges, the court may suspend the person charged from practice at its bar pending the hearing thereof.

(July 29, 1970, 84 Stat. 521, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, §§ 1(b)(113), (114), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-2503. 1973 Ed., § 11-2503.

CASE NOTES

ANALYSIS

Construction and application.

Determination of penalty.

In general.

Offenses involving moral turpitude.

—“Moral turpitude” defined, offenses involving moral turpitude.

—Bribes, offenses involving moral turpitude.

—Conspiracy offenses, offenses involving moral turpitude.

—Disbarment.

—Drugs, offenses involving moral turpitude.

—Extortion, offenses involving moral turpitude.

—Forgery and fraud offenses, offenses involving moral turpitude.

—In general.

—Mootness, offenses involving moral turpitude.

—Obstruction of justice, offenses involving moral turpitude.

—Real estate offenses, offenses involving moral turpitude.

—Sexual misconduct, offenses involving moral turpitude.

—Tax offenses, offenses involving moral turpitude.

—Theft offenses, offenses involving moral turpitude.

—Witness tampering, offenses involving moral turpitude.

Pardons.

Practice and procedure.

—Collateral attack, practice and procedure.

—Due process.

—Entitlement to hearing, practice and procedure.

—Evidence, practice and procedure.

—Filing of certificate of conviction, practice and procedure.

—In general.

—Persons who may bring complaint.

Reciprocal discipline.
 Reinstatement.
 Review.
 Validity.

Construction and application.

When an attorney's convictions on more than one count are involved, disbarment is mandated if any one of them involves moral turpitude. In re Libby, 945 A.2d 1169, 2008 D.C. App. LEXIS 99 (2008).

"Thereafter" in attorney disciplinary statute requiring that attorney shall thereafter cease to be member was ambiguous, thus requiring examination of legislative history; it may have connoted indefiniteness (afterward, subsequently, thenceforth) as well as permanence (from then on, attorney disbarred forever). D.C. Code 1981, § 11-2503(a). In re McBride, 602 A.2d 626, 1992 D.C. App. LEXIS 15 (1992).

Statute requiring that attorney convicted of crime involving moral turpitude be disbarred "thereafter" does not require disbarment for life, even though statute expressly provided for modification or vacation of disbarment only in event of pardon; provisions regarding vacation and modification of disbarment were not intended to affect attorney's right to reinstatement; overruling In re Kerr, 424 A.2d 94. D.C. Code 1981, § 11-2503(a). In re McBride, 602 A.2d 626, 1992 D.C. App. LEXIS 15 (1992).

In attorney discipline case, Court of Appeals applied by analogy rule of lenity applicable in criminal cases to resolve ambiguity in statute as to whether disbarment resulting from conviction of crime involving moral turpitude was to be permanent. D.C. Code 1981, § 11-2503(a). In re McBride, 602 A.2d 626, 1992 D.C. App. LEXIS 15 (1992).

Determination of penalty.

For purposes of attorney disciplinary proceedings, fact that attorney pled guilty to attempted rather than completed crimes involving moral turpitude did not warrant consideration of any sanction less than mandatory disbarment, as same requisite intent, as well as proof that he undertook substantial steps toward commission of crimes of which he was convicted, was necessary for conviction. In re Johnson, 48 A.3d 170, 2012 D.C. App. LEXIS 316 (2012).

Suspension from practice of law for six months was appropriate sanction following attorney's guilty plea to misdemeanor insurance fraud; facts did not indicate that crime was one of moral turpitude, and therefore, disbarment was not required. In re Wiss, 948 A.2d 1179, 2008 D.C. App. LEXIS 241 (2008).

Thirty-day suspension, as opposed to public censure, was appropriate sanction for attorney who was convicted of misdemeanor sexual abuse and whose conduct violated rule pro-

viding that it is professional misconduct for an attorney to commit a criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness; despite attorney's lack of prior disciplinary history, the nature of his conduct, coupled with his questionable moral fitness, justified sanctions more serious than public censure, and as mitigating factors, attorney was on inactive status and appeared to no longer practice law and this behavior was aberrant and not likely to repeat itself. In re Harkins, 899 A.2d 755, 2006 D.C. App. LEXIS 216 (2006).

Attorney's theft of government property mandated disbarment as an offense involving moral turpitude, even if his other offense, concealment of a material fact, was not a crime of moral turpitude. In re Dowdey, 861 A.2d 602, 2004 D.C. App. LEXIS 618 (2004).

Attorney's misconduct involving dishonesty and fraud warranted a suspension for six months, and a subsequent two-year period of probation was appropriate, rather than a requirement that he demonstrate fitness to practice; attorney was suspended for more than three years pending resolution of the case, and procedures for proving rehabilitation were time-consuming. In re Lopes, 770 A.2d 561, 2001 D.C. App. LEXIS 92 (2001).

In determining the appropriate sanction in attorney discipline cases, the Board on Professional Responsibility is to review all relevant factors, including: (1) the nature of the violation; (2) the mitigating and aggravating circumstances; (3) the need to protect the public, the courts and the legal profession; and (4) the moral fitness of the attorney. In re Slattery, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

For purpose of determining appropriate penalty for attorney who commits crime, crime can involve moral turpitude *per se* without involving intent to defraud. D.C. Code 1981, § 11-2503(a). In re McBride, 602 A.2d 626, 1992 D.C. App. LEXIS 15 (1992).

In determining proper penalty for attorney who commits crime, Board on Professional Responsibility shall initially consider, if the crime is felony, whether it inherently involves moral turpitude; if felony does not inherently involve moral turpitude, Board then considers whether it involves moral turpitude on the facts. D.C. Code 1981, § 11-2503(a). In re McBride, 602 A.2d 626, 1992 D.C. App. LEXIS 15 (1992).

For purpose of determining proper penalty for attorney who commits crime, once Court of Appeals determines whether particular felony inherently involves moral turpitude, that determination shall be applicable to future cases concerning same felony, and shall not be reexamined except *en banc*. D.C. Code 1981, § 11-2503(a). In re McBride, 602 A.2d 626, 1992 D.C. App. LEXIS 15 (1992).

For purpose of determining appropriate penalty for attorney who engages in criminal conduct, no misdemeanor can involve moral turpitude per se, even if misdemeanor is serious crime and one element is "intent to defraud." D.C. Code 1981, § 11-2503(a). In re McBride, 602 A.2d 626, 1992 D.C. App. LEXIS 15 (1992).

Finality of conviction of crime coupled with Disciplinary Board's finding of moral turpitude requires disbarment. D.C. Code of Professional Responsibility, DR1-102(A)(3, 5); D.C. Code § 11-2503(a). In re Colson, 412 A.2d 1160, 1979 D.C. App. LEXIS 543 (1979).

In general.

A conviction is not a prerequisite to a finding that a lawyer has violated rule providing that it is professional misconduct for a lawyer to commit a criminal act. In re Ditton, 954 A.2d 986, 2008 D.C. App. LEXIS 370 (2008).

Automatic disbarment of attorney was warranted, where attorney pled guilty to three felonies of theft and fraud in New York, all of attorney's crimes were offenses involving moral turpitude, and statute provided for automatic disbarment of an attorney for conviction of an offense involving moral turpitude. In re Krouner, 920 A.2d 1039, 2007 D.C. App. LEXIS 159 (2007).

In reciprocal disciplinary action, rebuttable presumption exists that the discipline will be the same in the District of Columbia as it was in the original disciplining jurisdiction. In re Wilkins, 887 A.2d 27, 2005 D.C. App. LEXIS 629 (2005).

In reciprocal disciplinary action, disbarment was appropriate sanction for attorney who was disbarred in Alabama for violating statute prohibiting possession of United States mail matter which had been stolen, taken, embezzled or abstracted from an authorized depository; attorney's conviction of a felony involving fraudulent intent involved moral turpitude, and conviction of an offense involving moral turpitude warranted disbarment. In re Wilkins, 887 A.2d 27, 2005 D.C. App. LEXIS 629 (2005).

Attorney's federal conviction of bankruptcy fraud resulted in his automatic disbarment. In re Standard, 788 A.2d 154, 2001 D.C. App. LEXIS 258 (2001).

Until statute requiring disbarment when member of bar is convicted of offense involving moral turpitude is brought into play by actual conviction, attorney may be subjected to disciplinary sanctions only for his conduct, not for any supposed violation of criminal statute with which he has never even been charged. D.C. Code 1981, § 11-2503(a). In re Stiller, 725 A.2d 533, 1999 D.C. App. LEXIS 39 (1999).

Finding of "recklessness" may satisfy requirement of intent needed to justify finding of dishonesty violation under attorney-discipline rule, but may not be sufficient to stand in for

specific intent required to find moral turpitude, within meaning of second disciplinary rule. D.C. Code 1981, § 11-2503(a); Code of Prof. Resp., DR 1-102(A)(3, 4). In re Wilkins, 649 A.2d 557, 1994 D.C. App. LEXIS 203 (1994).

Attorney's anger when threatening federal witness over substantial period of time does not mitigate gravity of attorney's offense, for purpose of deciding in attorney disciplinary proceedings whether attorney has engaged in moral turpitude. In re Shillaire, 549 A.2d 336, 1988 D.C. App. LEXIS 194 (1988).

Offenses involving moral turpitude.

— "Moral turpitude" defined, offenses involving moral turpitude.

Bar Counsel did not establish in disciplinary proceeding by clear and convincing evidence that attorney, who pled guilty to the crime of misdemeanor theft of property after stealing merchandise from retail stores through a scheme of purchase and fraudulent return, was motivated by an intentional desire for personal gain, and thus that attorney's conduct involved moral turpitude requiring disbarment; attorney had moved with his family at least five times in the eight months before his string of thefts began, was working as an assistant to the President of the United States, was tasked with leading the White House response to a hurricane of immense proportions, was working long hours, and had been subjected to extreme stress. In re Allen, 27 A.3d 1178, 2011 D.C. App. LEXIS 528 (2011).

For purposes of attorney discipline, a crime involves "moral turpitude" if the act denounced by statute: (1) offends the generally accepted moral code of mankind; (2) involves baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man; or (3) is contrary to justice, honesty, modesty, or good morals. In re Rehberger, 891 A.2d 249, 2006 D.C. App. LEXIS 25 (2006), writ of certiorari denied by 549 U.S. 844, 127 S. Ct. 354, 166 L. Ed. 2d 76, 2006 U.S. LEXIS 6568, 75 U.S.L.W. 3166 (2006).

Attorney's guilty plea in federal court to three counts of making false statements to a government agency warranted one-year suspension from practice of law, with no fitness requirement for reinstatement, and dismissal of reciprocal disciplinary referral from state of Virginia, where offense of conviction did not involve moral turpitude, either per se or on facts of attorney's case. In re Rehberger, 891 A.2d 249, 2006 D.C. App. LEXIS 25 (2006), writ of certiorari denied by 549 U.S. 844, 127 S. Ct. 354, 166 L. Ed. 2d 76, 2006 U.S. LEXIS 6568, 75 U.S.L.W. 3166 (2006).

A crime may involve moral turpitude, as to warrant disbarment of attorney, either inherently, i.e., by consideration strictly of its statutory elements, or on the facts of a particular case. In *re* Rehberger, 891 A.2d 249, 2006 D.C. App. LEXIS 25 (2006), writ of certiorari denied by 549 U.S. 844, 127 S. Ct. 354, 166 L. Ed. 2d 76, 2006 U.S. LEXIS 6568, 75 U.S.L.W. 3166 (2006).

If the Board on Professional Responsibility determines that an offense committed by an attorney does not involve moral turpitude per se, a hearing is necessary to determine whether the underlying facts involve moral turpitude. In *re* Wheeler, 871 A.2d 476, 2005 D.C. App. LEXIS 152 (2005).

Determination by the Board on Professional Responsibility of whether a crime committed by an attorney involves moral turpitude per se is based solely on an examination of the elements of the statutory offense. In *re* Wheeler, 871 A.2d 476, 2005 D.C. App. LEXIS 152 (2005).

Attorney's conviction in another jurisdiction of misapplication of entrusted property, per se a crime of moral turpitude, required his disbarment. In *re* Wheeler, 871 A.2d 476, 2005 D.C. App. LEXIS 152 (2005).

"Moral turpitude" which results in automatic disbarment is conduct that is contrary to justice, honesty, or morality in context of attorney disciplinary proceeding. In *re* Tidwell, 831 A.2d 953, 2003 D.C. App. LEXIS 551 (2003).

Felony theft by attorney, his fraudulent misappropriation as a fiduciary, and obstruction of justice were "offenses involving moral turpitude" per se and warranted disbarment. In *re* Taylor, 765 A.2d 546, 2001 D.C. App. LEXIS 8 (2001).

Crime involving "moral turpitude per se" for purposes of attorney discipline is defined as one that offends generally accepted moral code of mankind and constitutes act of baseness, vileness or depravity in private and social duties which man owes to his fellow men or to society in general, contrary to accepted and customary rule of right and duty between man and man. D.C. Code 1981, § 11-2503. In *re* Sharp, 674 A.2d 899, 1996 D.C. App. LEXIS 50 (1996).

Act may involve "moral turpitude," for purposes of attorney disciplinary proceeding, if it is base, vile or depraved, or if it is contrary to justice, honesty, modesty, or good morals. In *re* McBride, 642 A.2d 1270, 1994 D.C. App. LEXIS 83 (1994).

When applied in context of attorney misconduct, term "moral turpitude" connotes fraudulent or dishonest intent. D.C. Code 1973 § 11-2503(a). In *re* Willcher, 447 A.2d 1198, 1982 D.C. App. LEXIS 388 (1982).

For purposes of discipline, crime is one involving "moral turpitude" if act denounced by statute offends generally accepted moral code of mankind. D.C. Code of Professional Respon-

sibility, DR1-102(A)(3, 5); D.C. Code § 11-2503(a); D.C. Code Bar Rules, rule 11, §§ 7(2), 15, 15(1, 2, 4); 18 U.S.C. § 1503; U.S. Const. Amends. 5, 14. In *re* Colson, 412 A.2d 1160, 1979 D.C. App. LEXIS 543 (1979).

— Bribes, offenses involving moral turpitude.

Conspiracy to bribe state court judge with \$40,000 payment for favorable ruling was "crime of moral turpitude" per se within the meaning of statute requiring mandatory disbarment following conviction of crime or moral turpitude; bribery inherently involved moral turpitude, and conspiracy to commit crime of moral turpitude was itself crime of moral turpitude. In *re* Balducci, 976 A.2d 899, 2009 D.C. App. LEXIS 332 (2009).

— Conspiracy offenses, offenses involving moral turpitude.

Conviction of conspiracy to commit a crime of moral turpitude is itself a crime of moral turpitude, which results in mandatory disbarment of a member of the District of Columbia Bar. In *re* Lickstein, 972 A.2d 314, 2009 D.C. App. LEXIS 163 (2009).

Attorney's conviction in Connecticut for capital felony, murder as an accessory, and conspiracy to commit murder, which were equivalent to commission of, or conspiracy to commit, first-degree premeditated murder under District of Columbia law, involved moral turpitude per se, and thus, disbarment was mandated. In *re* Carpenter, 891 A.2d 223, 2006 D.C. App. LEXIS 11 (2006).

Attorney's conviction for conspiring to engage in a monetary transaction in property believed to be derived from illegal drug trafficking was for a crime of moral turpitude, and thus, disbarment, rather than suspension, was warranted; drug trafficking, especially on the large scale suggested by the purported agent in this case, was sufficiently egregious that attorney's knowing and willing involvement in it, albeit only in integral financial aspects, evidenced moral turpitude. In *re* Lee, 755 A.2d 1034, 2000 D.C. App. LEXIS 161 (2000).

Where object of conspiracy involving attorney is crime involving moral turpitude, conviction for conspiracy to commit underlying offense is itself a crime inherently involving moral turpitude. D.C. Code 1981, § 11-2503(a). In *re* Lobar, 632 A.2d 110, 1993 D.C. App. LEXIS 254 (1993).

Crimes of conspiracy to sell narcotic drugs and to receive and conceal narcotic drugs are crimes involving moral turpitude and, upon conviction thereof, warrant disbarment. 26 U.S.C. (1964 Ed.) § 4705(a), Narcotic Drugs Import and Export Act, § 2(c) as amended 21 U.S.C. (1964 Ed.) § 174; D.C. Code § 11-

2503(a). In re Roberson, 429 A.2d 530, 1981 D.C. App. LEXIS 255 (1981).

— Disbarment.

Attorney's persistent, protracted, and extremely serious and flagrant acts of dishonesty as witnessed by an arbitrator, the hearing committee, and the California State Court of Appeal, in addition to his criminal conduct in seeking to deprive individual of any of the benefits of her labor and investments in business ventures by taking and controlling the monetary fruits of the ventures for his own personal use, warranted disbarment from practice of law. In re Pelkey, 962 A.2d 268, 2008 D.C. App. LEXIS 490 (2008).

Attorney's conviction for conspiracy to defraud the United States was inherently a crime of moral turpitude, and thus, disbarment was required, by statute. In re Hoover-Hankerson, 953 A.2d 1025, 2008 D.C. App. LEXIS 287 (2008).

When an attorney is convicted of multiple offenses, disbarment is imposed if any one of them involves moral turpitude per se. In re Hoover-Hankerson, 953 A.2d 1025, 2008 D.C. App. LEXIS 287 (2008).

— Drugs, offenses involving moral turpitude.

Disbarment was required sanction for attorney who had been convicted of distribution of controlled substance, which was crime involving moral turpitude. In re Jafroodi, 948 A.2d 1178, 2008 D.C. App. LEXIS 242 (2008).

Suspension of attorney for 30 days, but with Kersey mitigation for professional misconduct substantially affected by the attorney's addiction to lawfully obtained prescription drugs, so that the suspension would be stayed during two years of conditional probation, was appropriate for attorney whose misconduct had resulted in misdemeanor convictions for theft and possession of a controlled substance not obtained pursuant to a valid prescription. In re Soininen, 783 A.2d 619, 2001 D.C. App. LEXIS 228 (2001).

Kersey mitigation, for professional misconduct substantially affected by the attorney's addiction to lawfully obtained prescription drugs, may be used in appropriate cases where the misconduct has resulted in misdemeanor convictions of crimes not involving moral turpitude. In re Soininen, 783 A.2d 619, 2001 D.C. App. LEXIS 228 (2001).

Mitigation of the sanction for violation of attorney disciplinary rule is not available in cases of addiction to illegal drugs. In re Soininen, 783 A.2d 619, 2001 D.C. App. LEXIS 228 (2001).

Attorney's possession of a controlled substance with intent to distribute is a crime of moral turpitude per se, mandating disbarment.

In re Lee, 755 A.2d 1034, 2000 D.C. App. LEXIS 161 (2000).

Where drug trafficking is involved, even an attorney who has never actually possessed the drugs may be disbarred. In re Lee, 755 A.2d 1034, 2000 D.C. App. LEXIS 161 (2000).

— Extortion, offenses involving moral turpitude.

Attorney's conviction of extortion under the color of official right involved crime of moral turpitude per se, warranting disbarment; essence of offense, a public official obtaining payment to which he was not entitled, knowing that payment was made in return for official acts, involved baseness, vileness, or depravity in the private and social duties owed to attorney's fellow men or to society in general, and offense clearly required intentional dishonesty for personal gain. In re Johnson, 48 A.3d 170, 2012 D.C. App. LEXIS 316 (2012).

— Forgery and fraud offenses, offenses involving moral turpitude.

Disbarment of attorney who pled guilty to felony offense of knowingly and fraudulently making a false oath and account in relation to a bankruptcy petition was mandatory; crime of bankruptcy fraud inherently involved moral turpitude. In re Zodrow, 43 A.3d 943, 2012 D.C. App. LEXIS 164 (2012).

There was no evidence in attorney disciplinary proceeding that attorney knew that form he signed as officer of communications company contained false representations of fact regarding source of funding for a private purchase of company's common stock, as necessary for a finding that his resulting conviction under federal statute for willful false entries or willful neglect to make full, true and correct entries in records of a carrier subject to Federal Communications Commission regulation involved moral turpitude so as to require disbarment, though attorney's signature certified that the information on form was true, complete, and correct based on a reasonable inquiry. In re Rigas, 9 A.3d 494, 2010 D.C. App. LEXIS 725 (2010).

Disbarment of attorney was warranted, in attorney disciplinary case, where attorney pled guilty to five counts of theft, two counts of fraud, and contempt of court in connection with attorney's conduct in swindling a series of landlords and prospective tenants, and attorney's offenses involved moral turpitude, thus warranting disbarment under statute. In re Hallmark, 998 A.2d 284, 2010 D.C. App. LEXIS 287 (2010).

Disbarment was appropriate sanction for attorney convicted of offense of mail fraud, a crime of moral turpitude per se. In re Juliano, 912 A.2d 553, 2006 D.C. App. LEXIS 636 (2006).

Attorney's conduct in committing misdemeanor offense of drawing a check of less than \$200 on insufficient funds, with intent to defraud, and failing to report conviction and public reprimand by bar in other jurisdiction to Bar Counsel, warranted 30-day suspension, in light of fact that offense did not constitute crime involving moral turpitude. *In re Powell*, 836 A.2d 579, 2003 D.C. App. LEXIS 694 (2003).

Attorney's conviction for bank fraud was crime of moral turpitude per se and warranted disbarment. *In re Kelly*, 816 A.2d 52, 2003 D.C. App. LEXIS 25 (2003).

Disbarment from practice of law was warranted for attorney who was convicted of mail fraud in the United States District Court for the District of Maryland. *In re Laub*, 810 A.2d 413, 2002 D.C. App. LEXIS 662 (2002).

Attorney's convictions for mail fraud and wire fraud involved moral turpitude per se, and thus, disbarment was mandated. *In re Evans*, 793 A.2d 468, 2002 D.C. App. LEXIS 48 (2002).

Bankruptcy fraud is a crime that inherently involves moral turpitude, and an attorney's disbarment is mandatory upon his or her conviction thereof. *In re Standard*, 788 A.2d 154, 2001 D.C. App. LEXIS 258 (2001).

Forgery and grand larceny are crimes involving moral turpitude per se. D.C. Code 1981, § 11-2503(a); N.Y. C.L.S. Penal Law §§ 155.05, subd. 1, 155.30, 155.40, 170.10. *In re Sluys*, 632 A.2d 734, 1993 D.C. App. LEXIS 265 (1993).

Offense of offering a false instrument for filing in the first degree under New York law is a crime involving moral turpitude per se and conviction for the offense requires disbarment. N.Y. C.L.S. Penal Law § 175.35; D.C. Code 1981, § 11-2503(a). *In re Sluys*, 632 A.2d 734, 1993 D.C. App. LEXIS 265 (1993).

Conviction of attorney for conspiracy to commit wire fraud inherently involves moral turpitude. 18 U.S.C. §§ 371, 1343; D.C. Code 1981, § 11-2503(a). *In re Sluys*, 632 A.2d 734, 1993 D.C. App. LEXIS 265 (1993).

When convicted of conspiracy where the information specifically charges one with defrauding the United States, conviction inherently involves moral turpitude, since proof of intent to defraud is necessary for the conviction. D.C. Code 1981, § 11-2503(a). *In re Sluys*, 632 A.2d 734, 1993 D.C. App. LEXIS 265 (1993).

Obstruction of justice and forgery and uttering are crimes involving moral turpitude per se. D.C. Code 1981, §§ 11-2503(a), 22-3841, 22-3842(c); 18 U.S.C. § 1505. *In re Schwartz*, 619 A.2d 39, 1993 D.C. App. LEXIS 5 (1993).

Crime in which intent to defraud is essential element is crime involving moral turpitude per se for disciplinary purposes. *In re Bond*, 519 A.2d 165, 1986 D.C. App. LEXIS 515 (1986).

— In general.

Acts unrelated to the practice of law may nonetheless violate professional rule prohibit-

ing lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. *In re Pelkey*, 962 A.2d 268, 2008 D.C. App. LEXIS 490 (2008).

Attorney's actions throughout arbitration and subsequent disciplinary proceedings in attempting to suppress the truth regarding his business and personal relationships with individual, specifically concerning the manner in which attorney collected venture capital investment from individual only to withhold returns, violated professional rule prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. *In re Pelkey*, 962 A.2d 268, 2008 D.C. App. LEXIS 490 (2008).

Attorney's conduct in entering into business ventures with individual who contributed \$32,000 of her own funds as well as her full-time labor to support the ventures, only for attorney to leave individual out of ownership papers and deposit monetary returns from ventures in his own bank accounts, which he solely controlled, violated professional rule governing criminal conduct committed by lawyers that reflects adversely on the lawyer's honesty or trustworthiness. *In re Pelkey*, 962 A.2d 268, 2008 D.C. App. LEXIS 490 (2008).

A crime necessarily involves moral turpitude, as would mandate an attorney's disbarment, if it is contrary to justice, honesty, modesty, or good morals. *In re Luvara*, 942 A.2d 1125, 2008 D.C. App. LEXIS 22 (2008).

In determining whether a crime involves moral turpitude per se, as would mandate an attorney's disbarment, a court analyzes the statute of the criminal offense under which attorney was convicted, examining whether the least culpable offender under the terms of the statute necessarily engages in conduct involving moral turpitude. *In re Luvara*, 942 A.2d 1125, 2008 D.C. App. LEXIS 22 (2008).

A crime may involve moral turpitude, as would mandate disbarment of attorney who committed crime, either inherently, i.e., by consideration strictly of its statutory elements, or on the facts of a particular case. *In re Luvara*, 942 A.2d 1125, 2008 D.C. App. LEXIS 22 (2008).

Attorney's conviction in Pennsylvania of intimidation of a witness involved moral turpitude per se, and thus disbarment was mandated; conviction required intent or knowledge that his conduct would obstruct, impede, impair, prevent or interfere with the administration of criminal justice. *In re Luvara*, 942 A.2d 1125, 2008 D.C. App. LEXIS 22 (2008).

Disbarment was appropriate reciprocal discipline for attorney whose license was revoked in Virginia and whose license was suspended in California following his conviction in California for insider trading, where California Supreme Court found that the conviction involved moral turpitude, attorney did not take exception to

Board on Professional Responsibility's recommendation of disbarment, and there was no miscarriage of justice in the Virginia or California matters. In *re* Wittenberg, 941 A.2d 444, 2008 D.C. App. LEXIS 18 (2008).

Attorney's misdemeanor convictions in another jurisdiction of sexual battery and simple battery, committed against a client, constituted crimes of moral turpitude on the facts and were grounds for disbarment, where attorney engaged in sordid sexual contact with and abuse of female client who sought his advice concerning divorce action taken by her husband, attorney's conduct was for his own personal gratification which exceeded his ability to demonstrate public respect and appreciation of existing societal morals and values, and client and victim was quite vulnerable. In *re* Rehberger, 891 A.2d 249, 2006 D.C. App. LEXIS 25 (2006), writ of certiorari denied by 549 U.S. 844, 127 S. Ct. 354, 166 L. Ed. 2d 76, 2006 U.S. LEXIS 6568, 75 U.S.L.W. 3166 (2006).

Felony offense of making false statements in relation to documents required by the Employee Retirement Income Security Act (ERISA) warranted disbarment. In *re* Susman, 876 A.2d 637, 2005 D.C. App. LEXIS 269 (2005).

Presumptive sanction for intentional misappropriation, in attorney disciplinary proceedings in the District of Columbia, is disbarment. In *re* Wheeler, 871 A.2d 476, 2005 D.C. App. LEXIS 152 (2005).

Once the Court of Appeals determines that a particular crime committed by an attorney involves moral turpitude per se, disbarment must be imposed. In *re* Wheeler, 871 A.2d 476, 2005 D.C. App. LEXIS 152 (2005).

Attorney's convictions upon guilty pleas to 21 counts of mail fraud, false statements, and theft of government funds involved crimes of moral turpitude per se, thus requiring disbarment from practice of law. In *re* Young, 863 A.2d 811, 2004 D.C. App. LEXIS 640 (2004).

Conduct underlying attorney's federal conviction for conflict of interest, which was a non-serious misdemeanor, involved moral turpitude, and thus, disbarment was warranted as disciplinary sanction; attorney, while employed as hearing examiner for Bureau of Traffic Adjudication (BTA), on 20 occasions in 16-month period dismissed parking citations issued to vehicles registered to him, his wife, and two of his daughters, attorney held position of trust as government employee with adjudicative responsibilities, and attorney acted to benefit himself financially. In *re* Sims, 861 A.2d 1, 2004 D.C. App. LEXIS 581 (2004).

Attorney's conduct in failing to stop his car after he hit individual with a force that shattered windshield and was loud enough to be heard by neighbors in their houses and in failing to notify the authorities until several

days later involved moral turpitude, and because attorney's conduct involved moral turpitude, disbarment was mandatory in reciprocal disciplinary proceeding involving attorney who was disbarred in New York after he entered a plea of guilty to a charge of leaving the scene of a fatal automobile accident without reporting it. In *re* Tidwell, 831 A.2d 953, 2003 D.C. App. LEXIS 551 (2003).

A lawyer need not actually be convicted of a crime of moral turpitude in order to be disbarred on the basis of the underlying conduct. In *re* Corizzi, 803 A.2d 438, 2002 D.C. App. LEXIS 388 (2002).

Attorney's convictions for perjury, conspiracy to commit wire fraud, and conspiracy to commit obstruction of justice were crimes involving moral turpitude per se, and thus, disbarment was mandated. In *re* Gormley, 793 A.2d 469, 2002 D.C. App. LEXIS 49 (2002).

Disbarment, as recommended by Board of Professional Responsibility, was warranted sanction for crime involving moral turpitude, namely misdemeanor sexual contact with minor, to which attorney pleaded guilty, even though attorney indicated that mental state was to some degree impaired, where Board concluded that evidence indicated that attorney sufficiently understood wrongfulness of behavior and was aware that minor victim was legally incapable of consent, and attorney failed to contest disbarment as sanction. In *re* Bewig, 791 A.2d 908, 2002 D.C. App. LEXIS 34 (2002).

Offenses related to espionage were crimes involving moral turpitude per se, and thus, attorney's convictions for such offenses required disbarment. In *re* Squillacote, 790 A.2d 514, 2002 D.C. App. LEXIS 10 (2002).

The acts that led to attorney's misdemeanor conviction for attempted bribery involved intentional dishonesty for personal gain, and thus amounted to moral turpitude, warranting disbarment, even though they involved relatively small amounts of money, where on a number of occasions attorney paid a clerk at Bureau of Traffic Adjudication (BTA) one-third to one-half of the amount attorney owed on a parking ticket to have the clerk make the BTA records indicate the tickets were either dismissed or paid. In *re* Tucker, 766 A.2d 510, 2000 D.C. App. LEXIS 152 (2000).

When attorney's misdemeanor conviction is at issue in disciplinary proceeding, it is not enough to look solely to elements of offense to determine existence of moral turpitude requiring disbarment, even if offense would involve moral turpitude per se were it a felony. In *re* Spiridon, 755 A.2d 463, 2000 D.C. App. LEXIS 164 (2000).

Board on Professional Responsibility may examine circumstances surrounding attorney's commission of misdemeanor which fairly bear on question of moral turpitude in its actual

commission, such as motive or mental condition. In *re* Spiridon, 755 A.2d 463, 2000 D.C. App. LEXIS 164 (2000).

For purposes of statute governing attorney disbarment for conviction of crime involving moral turpitude, violation of Maryland statute governing misappropriation of client funds while serving as fiduciary is crime that inherently involves moral turpitude per se. D.C. Code 1981, § 11-2503(a); Md.Code 1957, Art. 27, § 132. In *re* O'Malley, 683 A.2d 464, 1996 D.C. App. LEXIS 208 (1996).

Attorney's conviction of offense of taking indecent liberties with a child by person in custodial or supervisory relationship involved moral turpitude, warranting disbarment. D.C. Code 1981, § 11-2503; Code 1950, § 18.2-370.1; Bar Rule XI, § 14(f). In *re* Sharp, 674 A.2d 899, 1996 D.C. App. LEXIS 50 (1996).

Attorney's billing of clients directly to avoid payment to attorney's firm and shifting of fees and expenses on bills were "serious crimes" of nature involving moral turpitude, that is, felonies involving fraudulent or dishonest intent. Bar Rule XI, § 10. In *re* Appler, 669 A.2d 731, 1995 D.C. App. LEXIS 274 (1995), modified by 1996 D.C. App. LEXIS 12 (D.C. Jan. 24, 1996).

Offense of simple possession of cocaine is not crime of moral turpitude per se under attorney disciplinary rules. Rules of Prof.Conduct, Rule 8.4(b). In *re* Gardner, 650 A.2d 693, 1994 D.C. App. LEXIS 225 (1994).

An attorney's conduct in aiding and abetting in possession and use of identification document in order to fraudulently obtain passport does not involve moral turpitude when conduct is not motivated by desire for personal gain, harms no one, and, although misguided, is intended to help friend. 18 U.S.C. § 1028(a)(4). In *re* McBride, 642 A.2d 1270, 1994 D.C. App. LEXIS 83 (1994).

For purposes of determining attorney discipline, conviction of crime of false pretenses constitutes conviction of crime involving moral turpitude. D.C. Code 1981, §§ 11-2503(a), 22-1301. In *re* Anderson, 474 A.2d 145, 1984 D.C. App. LEXIS 365 (1984).

— Mootness, offenses involving moral turpitude.

Court of Appeals' referral to Board on Professional Responsibility, for determination, in reciprocal discipline proceeding after attorney's voluntary resignation from the California Bar during a disciplinary investigation in California relating to attorney's felony conviction in California for conspiracy to commit the unauthorized practice of law, whether the felony conviction was for a crime of moral turpitude, was moot, where attorney, after such referral, voluntarily resigned from California Bar, re-

sulting in California disciplinary proceedings being held in abeyance until attorney applied for reinstatement in California, with attorney precluded from seeking reinstatement in California for five years. In *re* Weaver, 954 A.2d 425, 2008 D.C. App. LEXIS 369 (2008).

— Obstruction of justice, offenses involving moral turpitude.

Attorney's convictions for obstruction of justice and perjury were crimes involving moral turpitude per se, and thus, disbarment was mandated. In *re* Libby, 945 A.2d 1169, 2008 D.C. App. LEXIS 99 (2008).

Disbarment of lawyer who instructed two clients to lie at depositions so as to conceal his referral relationship with chiropractor was warranted; although lawyer had not been convicted, subornation of perjury was a crime of moral turpitude, and lawyer's conduct resulted in the virtual destruction of clients' cases and exposed clients to possible criminal prosecution. In *re* Corizzi, 803 A.2d 438, 2002 D.C. App. LEXIS 388 (2002).

Obstruction of justice inherently involves moral turpitude, and therefore conspiracy to commit obstruction of justice is a crime of moral turpitude per se for purposes of imposing sanctions in attorney disciplinary proceedings. In *re* Gormley, 793 A.2d 469, 2002 D.C. App. LEXIS 49 (2002).

Attorney's conduct in misrepresenting relationship with government agency in attempt to avoid traffic court conviction, which resulted in conviction for obstructing justice, did not constitute "moral turpitude," within meaning of disciplinary rule, absent evidence that attorney knowingly and intentionally lied under oath to traffic court or that attorney acted with specific intent to defraud court. D.C. Code 1981, § 11-2503(a); Code of Prof.Resp., DR 1-102(A)(3). In *re* Wilkins, 649 A.2d 557, 1994 D.C. App. LEXIS 203 (1994).

Conviction of violating federal statute prohibiting obstruction of justice of administrative proceedings involves moral turpitude and warrants disbarment. 18 U.S.C. §§ 401(3), 1503, 1505; D.C. Code 1981, § 11-2503(a); Bar Rule II, § 6. In *re* Laurins, 576 A.2d 1351, 1990 D.C. App. LEXIS 152 (1990).

Threatening a witness, which is closely related to obstruction of justice, may constitute moral turpitude which would warrant attorney discipline. In *re* Shillaire, 549 A.2d 336, 1988 D.C. App. LEXIS 194 (1988).

Offense of obstruction of justice is inherently an offense involving moral turpitude and any conviction thereof requires disbarment. D.C. Code of Professional Responsibility, DR1-102(A)(3, 5); D.C. Code § 11-2503(a); D.C. Code Bar Rules, rule 11, §§ 7(2), 15; 18 U.S.C.

§ 1503; U.S. Const. Amends. 5, 14. In re Colson, 412 A.2d 1160, 1979 D.C. App. LEXIS 543 (1979).

— Real estate offenses, offenses involving moral turpitude.

Given the wealth of evidence of attorney's wrongdoing documented in lengthy record before hearing committee and hearing committee's detailed findings, evidence supported notion that attorney's involvement in fraudulent real estate investment scheme which resulted in New York conviction for misdemeanor offense of second-degree offering a false instrument for filing constituted moral turpitude warranting disbarment. D.C. Code 1981, § 11-2503(a). In re Mason, 736 A.2d 1019, 1999 D.C. App. LEXIS 205 (1999).

Attorney's involvement in fraudulent real estate investment scheme which resulted in New York conviction for second-degree offering false instrument for filing violated disciplinary rules prohibiting lawyer from engaging in illegal conduct involving moral turpitude that adversely reflects on fitness to practice law and conduct involving dishonesty, fraud, deceit, or misrepresentation. Code of Prof. Resp., DR 1-102(A)(3, 4) (1990). In re Mason, 736 A.2d 1019, 1999 D.C. App. LEXIS 205 (1999).

— Sexual misconduct, offenses involving moral turpitude.

Despite not directly implicating honesty or trustworthiness, sexually abusive contact, because of its inherently violent nature, calls into question one's fitness as a lawyer for purposes of rule providing that it is professional misconduct for an attorney to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness. In re Harkins, 899 A.2d 755, 2006 D.C. App. LEXIS 216 (2006).

The aggregate of attorney's multiple sexually abusive contacts and stalker-like harassments rose to the level of professional misconduct in violation of rule providing that it is professional misconduct for an attorney to commit criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness; attorney touched victim multiple times in a sexually inappropriate manner, rubbing against her leg, touching her thigh, and finally touching her buttocks, and attorney then proceeded to follow victim throughout the subway compartment as she sought to evade his unwanted advances. In re Harkins, 899 A.2d 755, 2006 D.C. App. LEXIS 216 (2006).

Attorney's sexual misconduct with minors and children directly implicates an attorney's trustworthiness because such actions imply a willingness to take advantage of those in a subordinate and vulnerable position for purposes of rule providing that it is professional misconduct for an attorney to commit a criminal

act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness. In re Harkins, 899 A.2d 755, 2006 D.C. App. LEXIS 216 (2006).

— Tax offenses, offenses involving moral turpitude.

Filing false tax return is not classified as offense involving moral turpitude per se, although such an offense may involve moral turpitude if it constitutes an act of baseness, vileness, or depravity in social duties which man owes to his fellow men or to society in general. 26 U.S.C. § 7206(1). In re Kerr, 611 A.2d 551, 1992 D.C. App. LEXIS 205 (1992).

For purposes of determining in attorney disciplinary context whether actions involve moral turpitude, charge of willful filing of false tax returns under penalty of perjury was not treated as if charged crime was the equivalent of perjury. 26 U.S.C. § 7206(1). In re Kerr, 611 A.2d 551, 1992 D.C. App. LEXIS 205 (1992).

Crimes of willful tax evasion and willful failure to pay taxes do not per se involve "moral turpitude" for attorney disciplinary purposes. D.C. Code, 1981, § 11-2503(a); 26 U.S.C. §§ 7201, 7203. In re Shorter, 570 A.2d 760, 1990 D.C. App. LEXIS 28 (1990).

Attorney who is convicted of tax evasion without jury specification as to which of alleged acts of evasion it relied upon in finding him guilty may be sanctioned in disciplinary proceeding only to extent required by those actions that would be minimally necessary to sustain underlying convictions. 26 U.S.C. §§ 7201, 7203. In re Shorter, 570 A.2d 760, 1990 D.C. App. LEXIS 28 (1990).

— Theft offenses, offenses involving moral turpitude.

Disbarment was mandatory sanction for attorney's Missouri conviction for felony stealing that resulted in disbarment in Missouri. In re Davis, 940 A.2d 108, 2007 D.C. App. LEXIS 675 (2007).

For purposes of determining appropriate penalty in attorney disciplinary proceedings, offense of misapplication of entrusted property, as statutorily defined in New Jersey, was offense of moral turpitude per se; conviction of misapplication of entrusted property required evidence of knowing misuse of such property, and offense was similar to felony theft, itself a crime of moral turpitude per se, but applied only to persons entrusted with property as a fiduciary. In re Wheeler, 871 A.2d 476, 2005 D.C. App. LEXIS 152 (2005).

Three criminal offenses of grand larceny for which attorney was convicted in New York inherently involved moral turpitude, and thus required disbarment. In re McCoole, 791 A.2d 910, 2002 D.C. App. LEXIS 39 (2002).

Disbarment was proper sanction for attorney's theft of fraternal organization's funds and his dishonest and deceitful deposition testimony in lawsuit that he filed against the national chapter of the organization, where attorney reimbursed the funds only after he was caught, subsequent to his making false statements in the deposition to conceal his actions. *In re Slattery*, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

Attorney's Maryland conviction for misdemeanor theft of \$18 was not an offense involving moral turpitude requiring disbarment; rather, it warranted one-year suspension from practice of law. *In re Spiridon*, 755 A.2d 463, 2000 D.C. App. LEXIS 164 (2000).

Theft statute under which attorney was convicted involved moral turpitude per se, and attorney's California conviction for grand theft and practice of law without a license warranted disbarment; crime of grand theft under California law, requiring felonious intent to steal or take property in addition to actual stealing or taking, inherently involved moral turpitude. *Deering's Cal. Bus. & Prof. Code* § 6126(b); *Deering's Cal.Penal Code* § 487; D.C. Code 1981, § 11-2503(a). *In re Caplan*, 691 A.2d 1152, 1997 D.C. App. LEXIS 56 (1997).

For attorney discipline purposes, criminal offenses involving theft and fraud inherently involve moral turpitude. D.C. Code 1981, § 11-2503(a). *In re Caplan*, 691 A.2d 1152, 1997 D.C. App. LEXIS 56 (1997).

Embezzlement by bankruptcy trustee constitutes moral turpitude per se and mandates disbarment. 18 U.S.C. § 153; D.C. Code 1981, § 11-2503(a). *In re Greenspan*, 683 A.2d 158, 1996 D.C. App. LEXIS 203 (1996).

Attorney's conviction of felony theft in another jurisdiction constituted crime of moral turpitude per se in District of Columbia absent any exceptional circumstances, thus warranting disbarment. D.C. Code 1981, § 11-2503(a). *In re Wiley*, 666 A.2d 68, 1995 D.C. App. LEXIS 217 (1995).

Theft of government property is a "crime of moral turpitude" per se within the meaning of statute which mandates disbarment upon conviction for an offense involving moral turpitude. *In re Dowdey*, 861 A.2d 602, 2004 D.C. App. LEXIS 618 (2004).

— Witness tampering, offenses involving moral turpitude.

Attorney's conviction of witness and evidence tampering involved crime of moral turpitude per se, warranting disbarment; essence of offense, purposefully destroying or concealing evidence, or attempting to do so, was contrary to justice and grave threat to due process of law. *In re Johnson*, 48 A.3d 170, 2012 D.C. App. LEXIS 316 (2012).

For purposes of attorney disciplinary proceeding, offense of witness tampering constituted offense of moral turpitude per se; conviction required proof of the knowing or intentional interference with the enforcement of law. *In re Blair*, 40 A.3d 883, 2012 D.C. App. LEXIS 281 (2012).

Pardons.

A full and unconditional presidential pardon after attorney's disbarment for federal convictions for conspiracy, obstruction of justice, and unlawful travel in interstate commerce with intent to commit bribery, did not entitle attorney to automatic reinstatement to practice law without regard to whether he had established fitness to practice; attorney was required to file appropriate application for reinstatement with Board on Professional Responsibility. *In re Borders*, 797 A.2d 716, 2002 D.C. App. LEXIS 100 (2002), writ of certiorari denied by 540 U.S. 966, 124 S. Ct. 432, 157 L. Ed. 2d 311, 2003 U.S. LEXIS 7725, 72 U.S.L.W. 3280 (2003).

Disbarment for conviction of an offense involving moral turpitude is both mandatory and permanent in all cases in which a pardon has not been granted. D.C. Code § 11-2503(a). *In re Kerr*, 424 A.2d 94, 1980 D.C. App. LEXIS 407 (1980).

Practice and procedure.

— Collateral attack, practice and procedure.

Judgment of conviction in federal court for a felony is binding upon the district court and the Circuit Court of Appeals and is not subject to collateral attack in a disbarment proceeding. *Laughlin v. United States*, 474 F.2d 444, 1972 U.S. App. LEXIS 6225 (C.A.D.C. 1972), writ of certiorari denied by 412 U.S. 941, 93 S. Ct. 2784, 37 L. Ed. 2d 402, 1973 U.S. LEXIS 2138 (1973).

Court may impose disciplinary measures for attorney's conviction of crime while collateral attack on attorney's underlying conviction is ongoing. D.C. Code 1981, § 11-2503(a). *In re Matzkin*, 665 A.2d 1388, 1995 D.C. App. LEXIS 219 (1995).

Attorney cannot collaterally attack conviction in subsequent disbarment proceedings and record of conviction is taken as conclusive proof that attorney did the underlying acts which constitute the crime. D.C. Code of Professional Responsibility, DR1-102(A)(3, 5); D.C. Code § 11-2503(a); D.C. Code Bar Rules, rule 11, §§ 7(2), 15, 15(1, 2, 4); 18 U.S.C. § 1503; U.S. Const. Amends. 5, 14. *In re Colson*, 412 A.2d 1160, 1979 D.C. App. LEXIS 543 (1979).

— Due process.

Due process claims brought by attorney against District of Columbia Court of Appeals, bar association, and bar officials, stemming

from bar disciplinary proceedings that resulted in attorney's suspension, were barred under doctrine of claim preclusion; appellate court had already held that District statute and bar rules expressly permitted suspension of attorney charged from practice pending disciplinary hearing. *Richardson v. District of Columbia*, 711 F.Supp.2d 115, 2010 U.S. Dist. LEXIS 48013 (2010), affirmed by, remanded by 2012 U.S. App. LEXIS 4665 (D.C. Cir. Mar. 2, 2012).

Statute providing for automatic disbarment of attorney for conviction of an offense involving moral turpitude did not violate due process; attorney had notice of the disbarment proceedings, and he was able to present his position to the Board on Professional Responsibility and argue that his crimes did not involve moral turpitude. *In re Krouner*, 920 A.2d 1039, 2007 D.C. App. LEXIS 159 (2007).

Attorney was afforded procedural due process in disciplinary proceeding in New York that resulted in his disbarment, and thus he was subject to reciprocal discipline pursuant to rule governing such discipline in District of Columbia; attorney was given adequate notice of specific rule he allegedly violated in New York in prejudicing the administration of justice, as well as adequate notice of conduct underlying that alleged violation, and the opportunity to present his case. *In re Edelstein*, 892 A.2d 1153, 2006 D.C. App. LEXIS 84 (2006).

Notwithstanding that bar discipline does not result in criminal conviction, an attorney who is the subject of such proceedings is entitled to procedural due process safeguards; the procedural requirements which apply in attorney disciplinary proceedings are analogous to those of other contested cases. *In re Thyden*, 877 A.2d 129, 2005 D.C. App. LEXIS 326 (2005).

Notwithstanding that bar discipline does not result in a criminal conviction, an attorney who is the subject of disciplinary proceedings is entitled to procedural due process safeguards. *In re Slattery*, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

The procedural due process requirements that apply in attorney disciplinary proceedings are analogous to those of other contested cases. *In re Slattery*, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

Attorney was not denied his right to due process in disciplinary proceeding, though one paragraph of specification of charges suggested discipline was sought due to attorney's committing theft by trick, and Bar Counsel allegedly argued theft by conversion and misappropriation in the evidentiary hearing; attorney was fairly put on notice of the charge against him, as specification did not explicitly mention theft by trick, but, rather, only mentioned theft. *In re*

Slattery, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

— Entitlement to hearing, practice and procedure.

Attorney's guilty plea in New York to three crimes involving moral turpitude validly waived attorney's right to mitigation hearing in resulting disbarment proceeding in the District of Columbia; attorney had clear notice, from case law, that conviction for crimes of moral turpitude per se resulted in automatic disbarment and thus could not claim ignorance as to potential consequences of his conviction. *In re Krouner*, 920 A.2d 1039, 2007 D.C. App. LEXIS 159 (2007).

Attorney did not waive his right to challenge recommendation of Board on Professional Responsibility that he be disbarred by failing to file timely objection to Board's stated intention to seek reciprocal discipline and by failing to participate in proceedings before Board, where sanction proposed by Board was greater than that imposed by original disciplining court. *In re Demos*, 875 A.2d 636, 2005 D.C. App. LEXIS 262 (2005).

An attorney convicted of a misdemeanor is entitled to a hearing to consider the circumstances of the transgression, and thus to determine whether that crime, on its particular facts, involved moral turpitude, for purposes of attorney discipline. *In re Tucker*, 766 A.2d 510, 2000 D.C. App. LEXIS 152 (2000).

Board on Professional Responsibility was required to hold hearing to determine whether attorney's conduct which led to Maryland conviction for misdemeanor theft of \$18 involved moral turpitude under all facts and circumstances found at hearing. *In re Spiridon*, 755 A.2d 463, 2000 D.C. App. LEXIS 164 (2000).

Only felony offenses by attorneys may be deemed to inherently involve moral turpitude and, consequently, in cases pertaining to misdemeanors, Board on Professional Responsibility must conduct hearing to determine whether attorney's conduct under circumstances, rather than crime itself, involves moral turpitude. D.C. Code 1981, § 11-2503(a). *In re Untalan*, 619 A.2d 978, 1993 D.C. App. LEXIS 20 (1993).

Lawyer convicted of misdemeanor, including one with intent to defraud, shall be entitled to hearing on whether that crime, on the facts, involves moral turpitude. D.C. Code 1981, § 11-2503(a). *In re McBride*, 602 A.2d 626, 1992 D.C. App. LEXIS 15 (1992).

— Evidence, practice and procedure.

Court of Appeals had jurisdiction to determine whether attorney's appropriation of money from a fraternal organization's bank account was a criminal act that warranted

discipline; a finding by clear and convincing evidence that the conduct at issue was a criminal act that merited a disciplinary sanction was altogether different than a finding beyond a reasonable doubt that the conduct merited conviction and a criminal penalty. In re Slattery, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

In attorney discipline cases, the burden of proving the charges rests with Bar Counsel and factual findings must be supported by clear and convincing evidence. In re Slattery, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

In case in which discipline was sought for attorney's committing theft, substantial evidence supported Board on Professional Responsibility's finding that attorney made an unauthorized use of money from a fraternal organization's bank account; other than attorney's unsworn representations, there was no evidence that he owned the funds, that he withdrew the funds for the benefit of the organization, that he ever made a contribution to the account, or that his father, a prior account signatory, ever asserted a claim to any portion of the funds, and bank statements addressed to attorney's home showing the name and tax identification number of the account provided attorney notice that ownership of the funds belonged to someone other than himself. In re Slattery, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

Substantial evidence supported Board on Professional Responsibility's finding, as grounds for discipline, that attorney was dishonest and deceitful based on his theft of fraternal organization's funds and the sworn testimony that he gave in a deposition following the lawsuit he filed against the national chapter of the organization; attorney had no instructions or authorization from the fraternal organization to withdraw the funds and place them in his account for personal use, and attorney's deposition answers regarding the status of the account were not merely equivocal, but misleading, false, and deceitful. In re Slattery, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

Substantial evidence supported Board on Professional Responsibility's finding that attorney knew alleged source of money for purposes of determining whether his conviction for conspiring to engage in monetary transaction in property believed to be derived from illegal drug trafficking was for crime of moral turpitude and, thus, warranted disbarment; attorney pled guilty to information which specifically asserted that he believed money to be derived from unlawful drug activity. In re Lee, 755 A.2d 1034, 2000 D.C. App. LEXIS 161 (2000).

— Filing of certificate of conviction, practice and procedure.

Once Board on Professional Responsibility determines that violation of particular statute

inherently involves moral turpitude, attorney convicted under that statute will be disbarred solely on basis of filing of certificate of conviction. D.C. Code 1981, § 11-2503(a). In re McBride, 602 A.2d 626, 1992 D.C. App. LEXIS 15 (1992).

— In general.

In an attorney discipline case, a court or hearing committee may look to the law of any jurisdiction that could have prosecuted attorney for alleged misconduct to determine whether the attorney's conduct is a "criminal act" under the rule of professional conduct prohibiting a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. In re Mitrano, 952 A.2d 901, 2008 D.C. App. LEXIS 297 (2008), writ of certiorari denied by 556 U.S. 1209, 129 S. Ct. 2064, 173 L. Ed. 2d 1134, 2009 U.S. LEXIS 3132, 77 U.S.L.W. 3594 (2009).

Reciprocal attorney disciplinary proceeding was dismissed as moot, where attorney's misdemeanor convictions in another jurisdiction of sexual battery and simple battery, committed against a client, constituted crimes of moral turpitude on the facts under District of Columbia law and were independent grounds for disbarment. In re Rehberger, 891 A.2d 249, 2006 D.C. App. LEXIS 25 (2006), writ of certiorari denied by 549 U.S. 844, 127 S. Ct. 354, 166 L. Ed. 2d 76, 2006 U.S. LEXIS 6568, 75 U.S.L.W. 3166 (2006).

Materials related to disciplinary proceeding against attorney who pleaded guilty to misdemeanor sexual contact with minor victim would be sealed to extent that Superior Court that heard criminal case sealed materials to protect identity of victim, despite usual rule that disciplinary proceedings were open to public from time of filing of petition, given that job of disciplinary system was to assist public, and no member of public could be more important in that regard than victim of attorney's criminal conduct. In re Bewig, 791 A.2d 908, 2002 D.C. App. LEXIS 34 (2002).

Requirement that Hearing Committee must issue its report within 60 days following attorney disciplinary hearing is directory, rather than mandatory; courts cannot allow principal purpose of disciplinary rules, which is the protection of the public, to be thwarted solely because the Hearing Committee failed to issue its decision in timely fashion. In re Bernstein, 774 A.2d 309, 2001 D.C. App. LEXIS 125 (2001).

Unfortunate delay of well over a year between the conclusion of attorney disciplinary hearing and the issuance of the Hearing Committee report did not preclude imposition of disciplinary sanction against attorney; while rule requires Hearing Committee to issue re-

port within 60 days, rule is directory, rather than mandatory. In re Bernstein, 774 A.2d 309, 2001 D.C. App. LEXIS 125 (2001).

In order to qualify for a reduced disciplinary sanction under the Kersey doctrine, an attorney is required to demonstrate: (1) by clear and convincing evidence that he had a disability; (2) by a preponderance of the evidence that the disability substantially affected his misconduct; and (3) by clear and convincing evidence that he has been substantially rehabilitated. In re Lopes, 770 A.2d 561, 2001 D.C. App. LEXIS 92 (2001).

In order to qualify for a reduced disciplinary sanction under the Kersey doctrine, an attorney is required to show that his illnesses, however labeled, deprived him of the meaningful ability to comport himself in his professional conduct in accordance with the basic norms of professional responsibility. In re Lopes, 770 A.2d 561, 2001 D.C. App. LEXIS 92 (2001).

Attorney established that he was qualified for a reduced disciplinary sanction, under the Kersey doctrine, for professional misconduct involving neglect and dishonesty; attorney's depression, together with fatigue and pain resulting from multiple sclerosis and reactions to medications, constituted a disability, attorney's infirmities substantially caused all of his misconduct, and attorney established that he was substantially rehabilitated. In re Lopes, 770 A.2d 561, 2001 D.C. App. LEXIS 92 (2001).

An attorney can be sanctioned only for those disciplinary violations enumerated in formal charges. In re Slattery, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

In measuring consistency between attorney discipline cases, as step taken by the Court of Appeals in determining whether to adopt Board on Professional Responsibility's recommended sanction, it is necessary to compare the gravity and frequency of the misconduct, any prior discipline, and any mitigating factors such as cooperation with Bar Counsel, remorse, illness or stress. In re Slattery, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

Whether attorney's Maryland conviction for misdemeanor theft of \$18 constituted moral turpitude within meaning of statute requiring disbarment for offenses involving moral turpitude was a question of law committed to Court of Appeals. In re Spiridon, 755 A.2d 463, 2000 D.C. App. LEXIS 164 (2000).

Once Bar Counsel has received certified proof that member of bar has been convicted of serious crime, Bar Counsel should transmit to Court of Appeals, and to Board on Professional Responsibility, certified copy of court record or docket entry evidencing conviction so that Court of Appeals can take immediate action to suspend attorney and Bar Counsel should initiate appropriate disciplinary proceeding. Bar

Rule XI, § 10(a-d). In re Hirschfeld, 622 A.2d 688, 1993 D.C. App. LEXIS 73 (1993).

For purpose of attorney disciplinary proceeding, Bar Counsel should deliver to Court of Appeals certified copy of final judgment on appeal of criminal conviction as soon as it becomes available so that Court may take final action as indicated. In re Hirschfeld, 622 A.2d 688, 1993 D.C. App. LEXIS 73 (1993).

If final judgment on appeal of attorney's criminal conviction is not available until after Board on Professional Responsibility has filed its report and recommendation regarding attorney discipline, Board need not file new report reaffirming its earlier recommendation. In re Hirschfeld, 622 A.2d 688, 1993 D.C. App. LEXIS 73 (1993).

In situations where a difficult question arises about whether crime inherently involves moral turpitude, if court errs at all in attorney disciplinary matter, it will err on side of admitting evidence that goes to moral implications of particular respondent's acts to determine if particular offense involved moral turpitude. In re Kerr, 611 A.2d 551, 1992 D.C. App. LEXIS 205 (1992).

Ultimate issue in attorney disciplinary proceeding of whether attorney engaged in moral turpitude is one of law rather than fact. In re Shillaire, 549 A.2d 336, 1988 D.C. App. LEXIS 194 (1988).

In disciplinary proceeding against attorney for moral turpitude after attorney has been found guilty of harassing federal witness and has been disciplined by bar of another state, affidavit by FBI agent regarding threats allegedly made by attorney against witness should be considered, where attorney does not contradict allegations in affidavit when pleading guilty to criminal charge, and where attorney acknowledges making numerous statements to numerous persons indicating that he would harm witness, as affidavit relates to attorney's intent in committing harassment offense, as well as ultimate question of moral turpitude. In re Shillaire, 549 A.2d 336, 1988 D.C. App. LEXIS 194 (1988).

Finding of mental or emotional condition which would explain and somehow temper attorney's behavior, and which would excuse attorney's behavior in attorney disciplinary proceeding, must be based on evidence in record, and not on something that federal judge or another state's disciplinary authority did for undisclosed reasons elsewhere. In re Shillaire, 549 A.2d 336, 1988 D.C. App. LEXIS 194 (1988).

If the specific crime has not been held by the Court of Appeals to involve moral turpitude, the crime will be considered by the Board on Professional Responsibility, but once the Court of Appeals has made a final determination that the crime involves moral turpitude, the Board

on Professional Responsibility must adhere to that ruling. D.C. Code § 11-2503(a). In *re* Roberson, 429 A.2d 530, 1981 D.C. App. LEXIS 255 (1981).

It is not necessary for the Board on Professional Responsibility or the Court of Appeals to consider the conduct which is outlined in an information when the crime is one which inherently involves moral turpitude. D.C. Code § 11-2503(a). In *re* Roberson, 429 A.2d 530, 1981 D.C. App. LEXIS 255 (1981).

— Persons who may bring complaint.

Complainant in attorney discipline case had sufficient basis to press complaint against attorney who misappropriated client funds, even though the complainant was the client's president, rather than the entity that actually had been the client; complainant had signed attorney's retainer agreement, had substantially financed the litigation in which attorney had represented client, and there was a common understanding that complainant would be reimbursed from the proceeds, if any, of that litigation. In *re* Mitrano, 952 A.2d 901, 2008 D.C. App. LEXIS 297 (2008), writ of certiorari denied by 556 U.S. 1209, 129 S. Ct. 2064, 173 L. Ed. 2d 1134, 2009 U.S. LEXIS 3132, 77 U.S.L.W. 3594 (2009).

Reciprocal discipline.

Attorney's five-year suspension in District of Columbia, as reciprocal discipline, could not be imposed *nunc pro tunc* to date of interim suspension, even if the five-year suspension, when added to attorney's interim suspension upon attorney providing notice to Bar Counsel that he had been convicted of a felony in another state, could result in a suspension longer than five-year disciplinary suspension in the other state; order imposing interim suspension had specifically directed attorney's attention to Bar Rule requiring filing of affidavit demonstrating with particularity, and with supporting proof, that attorney had fully complied with interim-suspension order, and a longer suspension in District of Columbia would be the consequence of attorney's failure to file the affidavit. In *re* Weaver, 954 A.2d 425, 2008 D.C. App. LEXIS 369 (2008).

Five-year suspension, with a fitness requirement for reinstatement, would be imposed as reciprocal discipline in District of Columbia, after attorney's voluntary resignation from the California Bar during a disciplinary investigation in California relating to attorney's felony conviction in California for conspiracy to commit the unauthorized practice of law; attorney's voluntary resignation from California Bar resulted in the California disciplinary proceedings being held in abeyance until attorney applied for reinstatement in California, with attorney precluded from seeking reinstatement

in California for five years. In *re* Weaver, 954 A.2d 425, 2008 D.C. App. LEXIS 369 (2008).

Three-year suspension from practice of law, with reinstatement upon proof of fitness, was appropriate reciprocal sanction for attorney's guilty plea in Kentucky to criminal charges of possession of cocaine, possession of prescription drug not in original container, and possession of drug paraphernalia, for which attorney was similarly sanctioned in Kentucky, in violation of Rules of Professional Conduct that prohibited attorney from committing criminal acts that reflected adversely on attorney's fitness as lawyer. In *re* Sawyer, 953 A.2d 1019, 2008 D.C. App. LEXIS 288 (2008).

Attorney's criminal conviction in another jurisdiction warranted imposition of effectively reciprocal discipline consisting of three-year suspension from practice of law with fitness requirement for reinstatement, where jurisdiction in which attorney was convicted imposed indefinite suspension, which sanction was not provided for in District of Columbia bar rules, and fitness requirement permitted deferral of question of whether attorney's extrajurisdictional conviction involved crime of moral turpitude, without necessity for immediate hearing. In *re* Gailliard, 944 A.2d 1109, 2008 D.C. App. LEXIS 114 (2008).

Imposition of reciprocal discipline that was functionally identical to that imposed in other jurisdiction, suspending attorney from the practice of law for five years, rendered moot the parallel disciplinary proceedings stemming from attorney's conviction for tax evasion, where attorney's potential reinstatement under reciprocal discipline was conditioned upon his demonstrating fitness to practice law. In *re* Uscinski, 2 A.3d 154, 2009 D.C. App. LEXIS 497 (2010).

Reinstatement.

For purposes of calculating when attorney could apply for reinstatement following his disbarment due to his convictions for crimes of moral turpitude, attorney's disbarment would be deemed to have commenced on date on which he filed his initial suspension affidavit, and the period of time during which his initial suspension was lifted and he was authorized to practice law would be excluded. In *re* Safavian, 29 A.3d 470, 2011 D.C. App. LEXIS 603 (2011).

Evidence was sufficient to establish, in attorney disciplinary proceeding, that attorney suffered from a delusional disorder of a persecutory type and thus would be required to demonstrate fitness before he was authorized to resume the practice of law; there was evidence that attorney was convinced that he was the victim of a wide-reaching conspiracy, and a psychiatrist and psychologist each testified in separate proceedings that his allegations were delusional and that the attorney's litigation

record of filing numerous civil actions of questionable merit manifested his condition. In re Ditton, 980 A.2d 1170, 2009 D.C. App. LEXIS 458 (2009).

Attorney's conduct, while practicing law in other state in which he was licensed, in admittedly charging his client an excessive fee, failing to respond to client's attempts to contact him, failing to return unearned fees, failing to put a retainer in a separate trust account, and failing to respond to Attorney Grievance Commission's inquiries regarding his client's complaint warranted reciprocal discipline, equal to that imposed in other state, of indefinite suspension of license to practice law, with stringent conditions for reinstatement. In re Brown, 890 A.2d 260, 2006 D.C. App. LEXIS 13 (2006).

For the purpose of seeking reinstatement to the bar, disbarment period was deemed to run *nunc pro tunc* from date of attorney's deficient affidavit which was filed after suspension and was later corrected to demonstrate compliance with order and disciplinary rule and to list jurisdictions and administrative agencies to which the attorney is admitted to practice. In re Susman, 876 A.2d 637, 2005 D.C. App. LEXIS 269 (2005).

Suspended attorney failed to show by clear and convincing evidence that he was fit to resume practice of law. In re Richardson, 874 A.2d 361, 2005 D.C. App. LEXIS 210 (2005).

Ordinarily, reinstatement following a disability suspension may be sought by attorney after one year has passed, absent court order shortening that period. In re Aldridge, 873 A.2d 335, 2005 D.C. App. LEXIS 203 (2005).

Disbarment was appropriate sanction for attorney who was hired by clients to help them administer individual's estate and who embezzled a total of at least \$73,850 from that estate, and as a condition of reinstatement, attorney would be directed to pay restitution to the estate; evidence showed a calculated pattern, over a period of time, of withdrawals from fiduciary accounts that were deposited into attorney's personal account, coupled with a deliberate effort to conceal this fact from Bar Counsel, as well as from the representatives and beneficiaries of the estate. In re Alexander, 865 A.2d 541, 2005 D.C. App. LEXIS 6 (2005).

In making its assessment of rehabilitation and good moral character of bar applicant who had previously been convicted of grand larceny, Committee on Admissions utilized inappropriate procedure in failing to hold its own hearing, and instead relying upon proceedings from other jurisdiction that led to his admission to bar of other jurisdiction; record showed serious split of views in other jurisdiction regarding applicant's rehabilitation and credibility, and conflicting findings could not serve as acceptable substitute for searching inquiry. In re Levi,

853 A.2d 702, 2004 D.C. App. LEXIS 291 (2004).

Reinstatement of attorney who was under indefinite suspension on account of disability, relating to long-term abuse of alcohol, marijuana, and cocaine, was warranted, where attorney's addictions were in sustained full remission, though attorney owed substantial amounts in taxes and in child support and he was in arrears in restitution payments owed to Client Security Fund, attorney had omitted significant material information from his reinstatement questionnaire, and attorney had failed to disclose a major asset to the Fund; attorney had been unemployed or underemployed and he had recognized his debts and had begun his efforts to satisfy them, omissions from questionnaire were not result of effort to mislead or conceal, and attorney had not intended to mislead the Fund. In re Brown, 845 A.2d 519, 2004 D.C. App. LEXIS 74 (2004).

Record supported conclusion of Board on Professional Responsibility that attorney had done little to rectify the circumstances which led to his disbarment, as required for reinstatement, considering that, in the years since disbarment, attorney's bank accounts were overdrawn frequently, he had outstanding judgments against him, and the misconduct for which attorney was disbarred was prompted by his precarious financial situation. In re Patkus, 841 A.2d 1268, 2004 D.C. App. LEXIS 50 (2004).

Five factors to be considered in an attorney reinstatement case include: (1) nature and circumstances of misconduct for which attorney was disciplined; (2) whether attorney recognizes seriousness of misconduct; (3) attorney's conduct since discipline was imposed, including steps taken to remedy past wrongs and prevent future ones; (4) attorney's present character; and (5) attorney's present qualifications and competence to practice law. In re Patkus, 841 A.2d 1268, 2004 D.C. App. LEXIS 50 (2004).

Review of the Board on Professional Responsibility's recommendation concerning reinstatement as member of the bar is especially deferential where neither the attorney petitioner nor Bar Counsel filed objections or exceptions to Board's report in Court of Appeals. In re Patkus, 841 A.2d 1268, 2004 D.C. App. LEXIS 50 (2004).

While the Board on Professional Responsibility's recommendation is entitled to great weight, the ultimate decision of whether an attorney should be reinstated rests with the Court of Appeals. In re Patkus, 841 A.2d 1268, 2004 D.C. App. LEXIS 50 (2004).

Attorney who previously had been disbarred for intentionally misappropriating client funds would be required to make restitution to the client of the illegal \$500 fee that attorney received, with interest at the legal rate of six percent per annum, as a condition of reinstatement.

ment; the obligation to pay interest was intertwined with the obligation to make restitution. In *re Jackson*, 801 A.2d 38, 2002 D.C. App. LEXIS 300 (2002).

Disbarred attorney who refused to reimburse the Client Security Fund for payments made to wronged clients and downplayed his culpability for the conduct for which he was sanctioned was not entitled to reinstatement. In *re Jackson*, 801 A.2d 38, 2002 D.C. App. LEXIS 300 (2002).

A disbarment in the District of Columbia is not necessarily permanent; a petition for reinstatement may be filed after five years. In *re Meisler*, 776 A.2d 1207, 2001 D.C. App. LEXIS 144 (2001).

Attorney who had been suspended from practice of law, with his reinstatement conditioned on proof of fitness to practice law, would be reinstated, on conditions that he implement restitution plan recommended by Board on Professional Responsibility and report his progress to Bar Counsel every six months, continue his consultation with lawyers' counseling committees for at least three years after reinstatement and report to Bar Counsel concerning consultations every six months, and be placed under supervision of a practice monitor appointed by Board for one year. In *re Roxborough*, 775 A.2d 1063, 2001 D.C. App. LEXIS 128 (2001).

Caution should be exercised in ordering reinstatement of a suspended attorney to practice of law where substantial amounts in restitution remain to be paid. In *re Roxborough*, 775 A.2d 1063, 2001 D.C. App. LEXIS 128 (2001).

Deference accorded to recommendation by Board of Professional Responsibility with regard to suspended attorney's petition for reinstatement is even greater where attorney's position has the active support of the Office of Bar Counsel. In *re Roxborough*, 775 A.2d 1063, 2001 D.C. App. LEXIS 128 (2001).

Supreme Court would not impose, as condition of suspended attorney's reinstatement to practice of law, that attorney certify to having read Voluntary Standards of Civility in Professional Conduct of District of Columbia Bar, notwithstanding attorney's resort to intemperate and inflammatory rhetoric throughout history of disciplinary proceedings; standards are voluntary and aspirational in nature, and are not binding on attorneys. In *re Bernstein*, 774 A.2d 309, 2001 D.C. App. LEXIS 125 (2001).

Attorney would be disbarred *nunc pro tunc* to date that he filed an affidavit in full compliance with professional rules, not to date he first filed requisite affidavit, where first affidavit was incomplete, for purposes of determining eligibility for reinstatement. In *re Tucker*, 766 A.2d 510, 2000 D.C. App. LEXIS 152 (2000).

Suspension for 90 days, with reinstatement conditioned upon attorney paying the \$3,652.74 judgment rendered against him for accepting

attorney fees from an estate without filing with the probate court a petition for such fees, as was then required by statute, was appropriate sanction for attorney's collection of an illegal fee and his interference with the administration of justice by failing to pay the judgment. In *re Travers*, 764 A.2d 242, 2000 D.C. App. LEXIS 290 (2000).

Attorney disbarred when she was convicted of mail fraud, an offense involving moral turpitude, was not entitled to reinstatement to the bar in light of fact that she had not received a pardon. D.C. Code § 11-2503(a); 18 U.S.C. § 1341. In *re Kerr*, 424 A.2d 94, 1980 D.C. App. LEXIS 407 (1980).

Review.

Attorney who pled guilty to misdemeanor theft of property would be suspended for one year, with restitution required as a condition of reinstatement, where when attorney committed the thefts he was tasked with leading the White House response to a hurricane of immense proportions, attorney had been subjected to extreme stress and his conduct did not involve moral turpitude, attorney had a clean disciplinary record, attorney expressed remorse for his conduct, and attorney had been successfully readmitted to the Bars of two other states in which he was licensed. In *re Allen*, 27 A.3d 1178, 2011 D.C. App. LEXIS 528 (2011).

A recommendation of the Board on Professional Responsibility with respect to a proposed sanction comes to the Court of Appeals with a strong presumption in favor of its imposition. In *re Slattery*, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

Generally speaking, if the Board on Professional Responsibility's recommended sanction falls within a wide range of acceptable outcomes, it will be adopted and imposed. In *re Slattery*, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

Comparing one attorney discipline case to another is an inherently imprecise process, and the Board on Professional Responsibility's expertise in disciplinary matters is entitled to considerable deference when the Court of Appeals decides whether to adopt the Board's proposed sanction. In *re Slattery*, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

Although the Board on Professional Responsibility exercises broad discretion in handing out attorney discipline, and its decision is subject only to a general review for abuse of that discretion, the Court of Appeals retains the ultimate choice of sanction. In *re Slattery*, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

The Court of Appeals reviews *de novo* any Board on Professional Responsibility determination of moral turpitude, since the ultimate issue of moral turpitude is one of law rather

than of fact. In re Tucker, 766 A.2d 510, 2000 D.C. App. LEXIS 152 (2000).

If the crime at issue in an attorney disciplinary case is a misdemeanor, the Court of Appeals must look beyond its statutory definition to the underlying facts; the Court of Appeals cannot find moral turpitude merely by reference to the elements of the criminal statute. In re Tucker, 766 A.2d 510, 2000 D.C. App. LEXIS 152 (2000).

In general, when Court of Appeals reviews recommendations of Board on Professional Responsibility, Court accepts Board's findings of facts if supported by substantial evidence, and adopts recommended sanction for attorney misconduct unless to do so would foster inconsistent dispositions or otherwise be unwarranted. In re Spiridon, 755 A.2d 463, 2000 D.C. App. LEXIS 164 (2000).

Validity.

Statute providing that disbarment for conviction of an offense involving moral turpitude was both mandatory and permanent in all

cases in which a pardon has not been granted did not violate separation of powers. In re Krouner, 920 A.2d 1039, 2007 D.C. App. LEXIS 159 (2007).

In regard to rule providing that it is professional misconduct for a lawyer to commit a criminal act, the Supreme Court disciplines for an attorney's conduct, not for any supposed violation of a criminal statute. In re Slattery, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

Although rule of professional conduct proscribing misconduct is applicable in cases in which an attorney has been convicted of a crime, an attorney is not immune from bar discipline merely because a complainant or prosecuting authority has chosen not to bring criminal charges. In re Slattery, 767 A.2d 203, 2001 D.C. App. LEXIS 23 (2001).

Statute providing that disbarment for conviction of an offense involving moral turpitude is both mandatory and permanent in all cases in which a pardon has not been granted is constitutional. D.C. Code § 11-2503(a). In re Kerr, 424 A.2d 94, 1980 D.C. App. LEXIS 407 (1980).

§ 11-2504. Censure, suspension, or disbarment by other courts.

The Federal courts in the District of Columbia and the Superior Court may censure, suspend, or expel an attorney from the practice at their respective bars, for a crime involving moral turpitude, or professional misconduct, or conduct prejudicial to the administration of justice. If an attorney is expelled from practice under this section, the court expelling that attorney shall notify the other Federal courts in the District of Columbia and the District of Columbia Court of Appeals of the action taken.

(July 29, 1970, 84 Stat. 521, Pub. L. 91-358, title I, § 111; June 13, 1994, Pub. L. 103-266, § 1(b)(115), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-2504. 1973 Ed., § 11-2504.

CASE NOTES

ANALYSIS

Amended rules.

In general.

Reciprocal discipline.

Amended rules.

Although Court of Appeals in attorney disciplinary proceeding would follow old rule regarding reciprocal disciplinary proceedings that allowed for reciprocal discipline in cases where an attorney was censured or reprimanded by another court, which rule was in effect at time attorney was disciplined by Supreme Judicial Court of Massachusetts but

which was subsequently amended while reciprocal disciplinary proceeding was pending, Court of Appeals would treat the result that would have ensued under application of the amended rule, publication of the Massachusetts order of public reprimand, as a factor that weighed at least somewhat in favor of identical reciprocal discipline and weighed against imposition of a suspensory sanction. In re Fitzgerald, 982 A.2d 743, 2009 D.C. App. LEXIS 540 (2009).

In general.

Attorney's actions in counseling his clients and drafting pleadings while under suspension

by United States District Court for the District of Columbia amounted to unauthorized practice of law, in violation of rules of professional conduct, where at time of such conduct, attorney had been suspended from practice in every jurisdiction in which he had been admitted. In *re* Schoeneman, 891 A.2d 279, 2006 D.C. App. LEXIS 19 (2006).

Attorney's misconduct in Oklahoma warranted public censure and five-year suspension from practice of law, with fitness requirement for reinstatement, where attorney resigned from practice of law in Oklahoma, conduct alleged in Oklahoma proceedings would not have resulted in disbarment in the District of Columbia, and attorney alleged circumstances in Oklahoma proceedings constituting mitigating circumstance of mental infirmity. In *re* Angel, 889 A.2d 993, 2005 D.C. App. LEXIS 648 (2005).

Consenting to indefinite suspension in another jurisdiction warranted indefinite suspension in District of Columbia, with right to apply for reinstatement after being reinstated in other jurisdiction or after five years, whichever occurred first. In *re* Harris-Smith, 772 A.2d 804, 2001 D.C. App. LEXIS 107 (2001).

Reciprocal discipline.

Presumption in favor of identical reciprocal discipline was not rebutted, and thus, reprimand was warranted for attorney's misconduct in failing to advise client of possible ineffective assistance resulting from attorney's untimely appeal of denial of application for political asy-

lum; record did not demonstrate that attorney's conduct resulted in substantial prejudice to client, which was the ground cited by the Board on Professional Responsibility for its recommendation of discipline substantially different from and more severe than the Massachusetts Order of Public Reprimand. In *re* Fitzgerald, 982 A.2d 743, 2009 D.C. App. LEXIS 540 (2009).

In reciprocal attorney disciplinary proceeding in District of Columbia after attorney's disbarment in Maryland, presumption in favor of identical reciprocal discipline was overcome, on the ground that the established misconduct warranted substantially different discipline in the District of Columbia, with respect to misconduct of associate attorney who falsely represented to other attorneys at law firm that he had filed an appeal in a client's case and who created falsified filing stamps on papers to make it appear that those papers had been filed in court, after attorney had failed to convey to client the law firm's offer to represent the client in the appeal for a reduced fee, which offer the law firm intended as a response to client's indication that he did not want to appeal because he did not want to incur additional fees and expenses; in prior disciplinary cases in District of Columbia involving dishonesty, attorneys had received suspensions for periods ranging from 30 days to three years, which range of sanctions was substantially different from disbarment. In *re* Guberman, 978 A.2d 200, 2009 D.C. App. LEXIS 347 (2009).

CHAPTER 26. REPRESENTATION OF INDIGENTS IN CRIMINAL CASES.

Sec.

11-2601. Plan for furnishing representation of indigents in criminal cases.

11-2602. Appointment of counsel.

11-2603. Duration and substitution of appointments.

11-2604. Payment for representation.

Sec.

11-2605. Services other than counsel.

11-2606. Receipt of other payments.

11-2607. Preparation of budget.

11-2608. Authorization of appropriations.

11-2609. [Repealed.]

§ 11-2601. Plan for furnishing representation of indigents in criminal cases.

The Joint Committee on Judicial Administration shall place in operation, within ninety days after the effective date of this chapter, in the District of Columbia a plan for furnishing representation to any person in the District of Columbia who is financially unable to obtain adequate representation —

(1) who is charged with a felony, or misdemeanor, or other offense for which the sixth amendment to the Constitution requires the appointment of counsel or for whom, in a case in which such person faces loss of liberty, any law of the District of Columbia requires the appointment of counsel;

(2) who is under arrest, when such representation is required by law;

(3) who is charged with violating a condition of probation or parole in custody as a material witness, or seeking collateral relief, as provided in —

(A) Section 23-110 of the District of Columbia Official Code (remedies on motion attacking sentence),

(B) Chapter 7 of Title 23 of the District of Columbia Official Code (extradition and fugitives from justice),

(C) Chapter 19 of Title 16 of the District of Columbia Official Code (habeas corpus),

(D) Section 928 of the Act of March 8, 1901 (D.C. Official Code, sec. 24-502) (commitment of mentally ill person while serving sentence);

(4) who is subject to proceedings pursuant to Chapter 5 of Title 21 of the District of Columbia Official Code (hospitalization of the mentally ill);

(5) who is a juvenile and alleged to be delinquent or in need of supervision.

Representation under the plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. The plan shall include a provision for private attorneys, attorneys furnished by the Public Defender Service, and attorneys and qualified students participating in clinical programs.

(Sept. 3, 1974, 88 Stat. 1090, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, § 1(b)(116), 108 Stat. 713.)

Cross references. — Family Division proceedings, right to counsel, see § 16-2304.

Representation of indigents by Public Defender Service, see § 2-1602.

Section references. — This section is referred to in § 11-2607.

Prior Codifications. — 1981 Ed., § 11-2601.

1973 Ed., § 11-2601.

Emergency legislation. — For temporary amendment of section, see § 505 of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 805 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Section 1001(b) of D.C. Act 11-44 provided that § 505 of that act shall expire on October 1, 1995.

Section 1701(b) of D.C. Act 11-124 provided that § 805 of that act shall expire on October 1, 1995.

Editor's notes. — Appropriations approved: Public Law 103-334, 108 Stat. 2577, the District of Columbia Appropriations Act, 1995, provided that funds appropriated for expenses under § 11-2601 et seq. for the fiscal year ending September 30, 1995, shall be available

for obligations incurred under the Act in each fiscal year since inception in fiscal year 1975.

Appropriations approved: Public Law 104-194, 110 Stat. 2358, the District of Columbia Appropriations Act, 1997, provided that funds appropriated for expenses under § 11-2601 et seq. (the District of Columbia Criminal Justice Act, 88 Stat. 1090; Pub. L. 93-412) for the fiscal year ending September 30, 1997, shall be available for obligations incurred under the Act in each fiscal year since inception in fiscal year 1975.

CASE NOTES

ANALYSIS

Attorney Fees.

Construction and application.

Continuance.

Due process.

Effect of deprivation of right.

Entitlement to counsel.

—Determination of right, entitlement to counsel.

—In general.

—Indigence, entitlement to counsel.

In general.

Purpose.

Review.

Attorney Fees.

Attorney's submission of a false Criminal Justice Act voucher for attorney fees for work that she allegedly failed to perform for indigent client constituted the charging of an unreasonable fee in violation of the rules of professional conduct. In re Cleaver-Bascombe, 892 A.2d 396, 2006 D.C. App. LEXIS 29 (2006).

Attorney violated rule of professional conduct regarding the making of false statements of fact or law to a tribunal when she submitted a Criminal Justice Act voucher for payment of attorney fees for work that she performed for indigent client that she knew contained charges for work that was not performed. In re Cleaver-Bascombe, 892 A.2d 396, 2006 D.C. App. LEXIS 29 (2006).

An attorney, who deliberately and knowingly makes a false representation in her Criminal Justice Act (CJA) voucher for attorney fees or who recklessly maintains inadequate time records, and consciously disregards the risk that she may overcharge a client or the CJA fund, engages in dishonesty within the meaning of rule of professional conduct regarding engaging in activity involving dishonesty. In re Cleaver-Bascombe, 892 A.2d 396, 2006 D.C. App. LEXIS 29 (2006).

The Criminal Justice Act program, regarding the appointment of counsel for indigent clients, is a part of the judicial process for purposes of

this rule of professional conduct regarding the prohibition against conduct that seriously interferes with the administration of justice. In re Cleaver-Bascombe, 892 A.2d 396, 2006 D.C. App. LEXIS 29 (2006).

Whether attorney acted with intent to defraud or recklessly, the consequences for the judicial process of the submission of a false Criminal Justice Act voucher for payment of attorney fees for work that she performed for indigent client were more than minimal, and thus, attorney's conduct violated rule of professional conduct that prohibited conduct that seriously interfered with the administration of justice. In re Cleaver-Bascombe, 892 A.2d 396, 2006 D.C. App. LEXIS 29 (2006).

Remand was necessary in attorney discipline case due to the Court of Appeals inability to reconcile satisfactorily the Board of Professional Responsibility's conclusion that attorney submitted a patently fraudulent voucher for attorney fees under the Criminal Justice Act with the Board's position that the hearing committee's findings did not support the conclusion that attorney presented false evidence or testimony; there would be a significant difference, for purposes of an appropriate sanction, between an attorney's deliberate fabrication of a claim and perjurious defense of it before the hearing committee and, on the other hand, her engaging, without an intent to defraud, in record-keeping so shoddy that it was the legal equivalent of dishonesty, but then presenting a legitimate defense without fabrication or perjury. In re Cleaver-Bascombe, 892 A.2d 396, 2006 D.C. App. LEXIS 29 (2006).

Construction and application.

Statute, which requires Joint Committee on Judicial Administration to implement plan for making appointed counsel available to any person in District of Columbia who is financially unable to obtain adequate representation and is seeking collateral relief, is construed to incorporate implicitly an "interest of justice" standard for trial court scrutiny of prisoner's re-

quest for legal assistance. D.C. Code 1981, § 11-2601(3)(A). *Jenkins v. United States*, 548 A.2d 102, 1988 D.C. App. LEXIS 170 (1988).

Continuance.

Trial court could not deny continuance in criminal contempt proceeding based on defendant's failure to secure counsel prior to the hearing; although defendant had several weeks notice of the hearing, he was not notified that he was entitled to court-appointed counsel if he could not afford his own or that contempt charge would be treated as criminal rather than civil. U.S. Const. Amend. 6; D.C. Code 1981, §§ 11-2601 to 11-2609, 16-1001 to 16-1006. *Thompson v. Thompson*, 559 A.2d 311, 1989 D.C. App. LEXIS 103 (1989).

Due process.

When court fails to appoint counsel who is competent to properly represent a defendant, given particular circumstances of an individual case, right to a fair trial under a due process clause of Fifth Amendment is implicated. U.S. Const. Amend. 5. *Pierce v. United States*, 402 A.2d 1237, 1979 D.C. App. LEXIS 388 (1979).

Effect of deprivation of right.

Where indigent defendant is convicted in single trial of several offenses, and was deprived of his right to have counsel appointed with respect to one or more of them, all convictions are subject to reversal. *Olevsky v. District of Columbia*, 548 A.2d 78, 1988 D.C. App. LEXIS 159 (1988).

Entitlement to counsel.

— Determination of right, entitlement to counsel.

In view of the legislative history of the Criminal Justice Act and of plan drawn up by local courts to implement the Act, the Criminal Justice Act office is authorized to make the determination whether a defendant is eligible for appointed counsel, subject to review or redetermination by the court if it appears that the financial circumstances of the defendant have changed. D.C. Code § 11-2602. *Gregory v. United States*, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

The Criminal Justice Act allows either the court or its authorized representative to make findings as to whether defendant is eligible for appointed counsel; the judge presiding in arraignment court is not personally required to make the determination. D.C. Code § 11-2602. *Gregory v. United States*, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

The Criminal Justice Act and its implementation plan are mandatory in application and it is, therefore, the duty of the court or the Criminal Justice Act office to determine whether a person appearing without counsel is eligible for

representation under the Act. D.C. Code § 11-2601 et seq. *Gregory v. United States*, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

— In general.

If the prisoner's post-conviction claim is sufficient for a hearing, it presumably will be colorable enough to warrant appointment of counsel. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

Defendant who faced jail sentence in indirect criminal contempt proceeding arising from violation of Civil Protection Order was entitled to court-appointed counsel. U.S.C. Const. Amend. 6; D.C. Code 1981, §§ 11-2601 to 11-2609, 16-1001 to 16-1006. *Thompson v. Thompson*, 559 A.2d 311, 1989 D.C. App. LEXIS 103 (1989).

There is no constitutional right to appointment of counsel to develop and pursue postconviction relief, and there is no statutory basis entitling criminal defendant, whose conviction has been affirmed on direct appeal, to have counsel appointed to pursue collateral relief. *Jenkins v. United States*, 548 A.2d 102, 1988 D.C. App. LEXIS 170 (1988).

— Indigence, entitlement to counsel.

Employer charged with willfully refusing to pay earned wages was entitled to free lawyer, under Criminal Justice Act, if employer was unable to afford his own attorney. D.C. Code 1981, §§ 11-2601 et seq., 36-103(1), 36-107, 36-213, 36-214. *Jenkins v. United States*, 548 A.2d 102, 1988 D.C. App. LEXIS 170 (1988).

Greatest service which counsel may render in many cases is that of negotiating with his opposite number for a guilty plea to a reduced charge, and to deny an indigent a legal representative is effectively to deny him the power to bargain at all. *Marston v. Oliver*, 324 F. Supp. 691, 1971 U.S. Dist. LEXIS 14267 (1971), reversed by 485 F.2d 705, 1973 U.S. App. LEXIS 7601 (4th Cir. Va. 1973).

Accused who was indigent at time of his request for assistance of counsel and whose request was denied and who was convicted of driving while his operator's license was suspended and sentenced to imprisonment for 12 months was entitled to have opportunity to defend himself by counsel, and accused's sentence could not stand by reason of refusal to afford him appointed counsel. *Marston v. Oliver*, 324 F. Supp. 691, 1971 U.S. Dist. LEXIS 14267 (1971), reversed by 485 F.2d 705, 1973 U.S. App. LEXIS 7601 (4th Cir. Va. 1973).

The Sixth Amendment guarantees to indigents accused in federal criminal prosecutions not just the mere formal appointment of someone who happens to be a lawyer but, more critically, legal assistance that is reasonably diligent, conscientious and competent. U.S. Const. Amend. 6. *United States v. Bailey*, 581

F.2d 984, 1978 U.S. App. LEXIS 10167 (C.A.D.C. 1978).

An indigent defendant in a criminal trial has right to effective assistance of counsel but does not have the right to appointed counsel of his choice. In re Investigation before April 1975 Grand Jury, 403 F. Supp. 1176, 1975 U.S. Dist. LEXIS 15288 (1975), vacated by 531 F.2d 600, 174 U.S. App. D.C. 268, 1976 U.S. App. LEXIS 13029, 91 L.R.R.M. (BNA) 2362 (1976).

Defendant was not entitled to have counsel assigned to her by the court where her husband was engaged in business netting him \$15 a day and defendant was making \$25 a week, since she could afford to hire counsel. U.S. Const. Amend. 6. U.S. v. Sampson, 161 F.Supp. 216, 1958 U.S. Dist. LEXIS 2349 (D.D.C.1958).

In general.

Defendant's letter or motion requesting appointment of counsel to pursue collateral attack on conviction without proffering grounds for relief is inherently defective. D.C. Code 1981, §§ 11-2601(3), 23-110. Jenkins v. United States, 548 A.2d 102, 1988 D.C. App. LEXIS 170 (1988).

Counsel has duty to alert court to any question regarding person's right to appointed counsel. Willcher v. United States, 408 A.2d 67, 1979 D.C. App. LEXIS 513 (1979).

While an indigent's preference for a particular attorney may be considered by the court, an indigent does not have an unqualified right to appointment of counsel of his own choosing.

U.S. Const. Amend. 6. Harling v. United States, 387 A.2d 1101, 1978 D.C. App. LEXIS 522 (1978).

Purpose.

The District of Columbia Criminal Justice Act, like its federal counterpart, was designed to ensure that indigent defendants would receive adequate counsel. D.C. Code § 11-2601 et seq.; 18 U.S.C. Gregory v. United States, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

Review.

Denial of defendant's request for counsel to pursue collateral attack on his conviction was not final order, and it was not appealable under collateral order doctrine; defendant was required to obtain final ruling on merits of motion collaterally attacking conviction before he could appeal order denying appointment of counsel to assist in that effort. D.C. Code 1981, §§ 11-2601(3), 23-110. Jenkins v. United States, 548 A.2d 102, 1988 D.C. App. LEXIS 170 (1988).

Error of trial court in removing defendant's court-appointed attorney over defendant's objection and without any justifiable basis was not rendered harmless by reason of fact that defendant eventually received a competent defense through substitute counsel; the trial court's arbitrary infringement on defendant's right to assistance of counsel required reversal even though no prejudice was shown. U.S. Const. Amend. 6. Harling v. United States, 387 A.2d 1101, 1978 D.C. App. LEXIS 522 (1978).

§ 11-2602. Appointment of counsel.

Counsel furnishing representation under the plan shall in every case be selected from panels of attorneys designated and approved by the courts. In all cases where a person faces a loss of liberty and the Constitution or any other law requires the appointment of counsel, the court shall advise the defendant or respondent that he or she has the right to be represented by counsel and that counsel will be appointed to represent the defendant or respondent if such person is financially unable to obtain counsel. Unless the defendant or respondent waives representation by counsel, the court, if satisfied after appropriate inquiry that the defendant or respondent is financially unable to obtain counsel, shall appoint counsel to represent that person. Such appointment may be made retroactive to include any representation furnished pursuant to the plan prior to appointment. The court shall appoint separate counsel for defendants or respondents having interests that cannot properly be represented by the same counsel, or when other good cause is shown. In all cases covered by this Act where the appointment of counsel is discretionary, the defendant or respondent shall be advised that counsel may be appointed to represent the defendant or respondent if such person is financially unable to obtain counsel, and the court shall in all such cases advise the defendant or respondent of the manner and procedures by which such person may request the appointment of counsel.

(Sept. 3, 1974, 88 Stat. 1090, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, §§ 1(b)(117)-(119), 108 Stat. 713.)

Section references. — This section is referred to in § 11-2603.

Prior Codifications. — 1981 Ed., § 11-2602.

1973 Ed., § 11-2602.

References in text. — “This Act,” referred to in the last sentence of this section, appears in the original but probably should read “this chapter.”

CASE NOTES

ANALYSIS

Constitutional necessity of appointment.

Effective assistance.

Eligibility.

In general.

Purpose.

Reversal of convictions.

Constitutional necessity of appointment.

Generally, there is no constitutional or statutory right to the appointment of counsel to pursue collateral relief after the direct appeal. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

The appointment of counsel is not required for a prisoner's post-conviction motion that is vague and conclusory or is palpably incredible and fails to state a claim, i.e., the assertions, even if true, would not entitle the prisoner to relief. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

There is no constitutional right to appointment of counsel to develop and pursue postconviction relief, and there is no statutory basis entitling criminal defendant, whose conviction has been affirmed on direct appeal, to have counsel appointed to pursue collateral relief. *Jenkins v. United States*, 548 A.2d 102, 1988 D.C. App. LEXIS 170 (1988).

Effective assistance.

The Sixth Amendment guarantees to indigents accused in federal criminal prosecutions not just the mere formal appointment of someone who happens to be a lawyer but, more critically, legal assistance that is reasonably diligent, conscientious and competent. *U.S. Const. Amend. 6. United States v. Bailey*, 581 F.2d 984, 1978 U.S. App. LEXIS 10167 (C.A.D.C. 1978).

An indigent defendant in a criminal trial has right to effective assistance of counsel but does not have the right to appointed counsel of his choice. In re Investigation before April 1975 Grand Jury, 403 F. Supp. 1176, 1975 U.S. Dist. LEXIS 15288 (1975), vacated by 531 F.2d 600, 174 U.S. App. D.C. 268, 1976 U.S. App. LEXIS 13029, 91 L.R.R.M. (BNA) 2362 (1976).

Eligibility.

Defendant was not entitled to have counsel assigned to her by the court where her husband

was engaged in business netting him \$15 a day and defendant was making \$25 a week, since she could afford to hire counsel. *U.S. Const. Amend. 6. U.S. v. Sampson*, 161 F.Supp. 216, 1958 U.S. Dist. LEXIS 2349 (D.D.C.1958).

A prisoner's request for the appointment of counsel to pursue collateral relief is to be considered under an interests of justice standard. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

In view of the legislative history of the Criminal Justice Act and of plan drawn up by local courts to implement the Act, the Criminal Justice Act office is authorized to make the determination whether a defendant is eligible for appointed counsel, subject to review or redetermination by the court if it appears that the financial circumstances of the defendant have changed. D.C. Code § 11-2602. *Gregory v. United States*, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

The Criminal Justice Act allows either the court or its authorized representative to make findings as to whether defendant is eligible for appointed counsel; the judge presiding in arraignment court is not personally required to make the determination. D.C. Code § 11-2602. *Gregory v. United States*, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

In general.

Defendant's appellate counsel, who had been appointed under District of Columbia Criminal Justice Act, had statutory obligation to perfect appeal from denial of defendant's second motion for post-conviction relief, which was based on alleged ineffective assistance of defendant's trial counsel, if defendant made timely request for her to do so, where defendant's direct appeal was pending when appellate counsel filed second motion for post-conviction relief. *U.S. Const. Amend. 6; D.C. Official Code*, 859 A.2d 634 (2001).

The appointment of counsel provided for under statute for the purpose of pursuing collateral relief is a matter within the sound discretion of the trial court. *Wei Hua Wu v. United States*, 798 A.2d 1083, 2002 D.C. App. LEXIS 294 (2002).

Counsel has duty to alert court to any question regarding person's right to appointed coun-

sel. Willcher v. United States, 408 A.2d 67, 1979 D.C. App. LEXIS 513 (1979).

Appointment by superior court judges of counsel under the Criminal Justice Act [D.C. Code 1981, § 11-2602] is a "judicial act" as to which immunity applies. *Stanton v. Chase*, 497 A.2d 1066, 1985 D.C. App. LEXIS 469 (1985).

Purpose.

The District of Columbia Criminal Justice Act, like its federal counterpart, was designed to ensure that indigent defendants would re-

ceive adequate counsel. D.C. Code § 11-2601 et seq.; 18 U.S.C. *Gregory v. United States*, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

Reversal of convictions.

Where indigent defendant is convicted in single trial of several offenses, and was deprived of his right to have counsel appointed with respect to one or more of them, all convictions are subject to reversal. *Olevsky v. District of Columbia*, 548 A.2d 78, 1988 D.C. App. LEXIS 159 (1988).

§ 11-2603. Duration and substitution of appointments.

A person for whom counsel is appointed shall be represented at every stage of the proceedings from such person's initial appearance before the court through appeals, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in section 2606 of this chapter [11-2606], as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the court finds that the person is financially unable to pay counsel whom such person had retained, it may appoint counsel as provided in section 2602 [11-2602], and authorize payment as provided in section 2604 [11-2604], as the interests of justice may dictate. The court may, in the interest of justice, substitute one appointed counsel for another at any stage of the proceedings.

(Sept. 3, 1974, 88 Stat. 1091, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, § 1(b)(120), 108 Stat. 713.)

Prior Codifications. — 1981 Ed., § 11-2603. 1973 Ed., § 11-2603.

CASE NOTES

ANALYSIS

Appointment of appellate counsel.
Choice of counsel.
Effectiveness of counsel.
In general.
Reinstatement.
Removal of attorney by court.
Review.

Appointment of appellate counsel.

Statute mandating appointment of counsel for indigents at every stage of proceedings does not require appointment of new appellate counsel to prepare frivolous petition for rehearing en banc. D.C. Code 1981, § 11-2603. *Wise v. United States*, 522 A.2d 898, 1987 D.C. App. LEXIS 316 (1987).

Choice of counsel.

Defendant's constitutionally protected right to choose his own counsel is not absolute, and

cannot be insisted upon in a manner that will obstruct an orderly procedure in courts of justice, and deprive such courts of exercise of their inherent powers to control the same. *Yancey v. United States*, 755 A.2d 421, 2000 D.C. App. LEXIS 148 (2000).

Defendant's constitutionally protected right to choose his own counsel may be balanced against other factors by trial court to prevent administration of justice from being impeded. *Yancey v. United States*, 755 A.2d 421, 2000 D.C. App. LEXIS 148 (2000).

Trial court did not violate defendant's right to choose his own counsel by ruling that defendant go to trial with an attorney who appeared to be of his own choosing, despite claim that attorney merely entered an appearance to obtain continuance for defendant's first attorney who had been suspended from practice of law for three months. *Yancey v. United States*, 755 A.2d 421, 2000 D.C. App. LEXIS 148 (2000).

Once counsel has been obtained, the court may not unreasonably interfere with the accused's choice of counsel. U.S. Const. Amend. 6. *Harling v. United States*, 387 A.2d 1101, 1978 D.C. App. LEXIS 522 (1978).

The only limitation that may be placed on the right to retain counsel of choice is that the client's selection may not impede or disrupt the orderly administration of justice. U.S. Const. Amend. 6. *Harling v. United States*, 387 A.2d 1101, 1978 D.C. App. LEXIS 522 (1978).

While an indigent's preference for a particular attorney may be considered by the court, an indigent does not have an unqualified right to appointment of counsel of his own choosing. U.S. Const. Amend. 6. *Harling v. United States*, 387 A.2d 1101, 1978 D.C. App. LEXIS 522 (1978).

Effectiveness of counsel.

Appellate counsel's statutory obligation to represent defendant through appeals, including ancillary matters appropriate to proceeding, included duty to pursue and file, during pendency of direct appeal, a postconviction motion requesting hearing on claim of ineffective assistance of trial counsel. *McCrimmon v. United States*, 853 A.2d 154, 2004 D.C. App. LEXIS 371 (2004).

Defense counsel's failure to call DNA expert, and decision to rely on government expert was reasonable trial strategy, in prosecution for child sexual abuse, and thus could not constitute ineffective assistance. *Sanchez-Rengifo v. United States*, 815 A.2d 351, 2002 D.C. App. LEXIS 799 (2002).

Counsel appointed under the Criminal Justice Act to handle murder defendant's direct appeal had a statutory duty to perfect appeal of the denial of motion for postconviction relief alleging ineffectiveness of trial counsel, which appointed counsel filed during the pendency of the direct appeal. *Williams v. United States*, 783 A.2d 598, 2001 D.C. App. LEXIS 226 (2001).

The Shepard procedure, pursuant to which counsel appointed on defendant's direct appeal has an obligation to file motion for postconviction relief alleging ineffectiveness of trial counsel, applies only when the defendant, during the pendency of his direct appeal, demonstrably knew or should have known of the grounds for alleging his trial attorney's ineffectiveness. *Williams v. United States*, 783 A.2d 598, 2001 D.C. App. LEXIS 226 (2001).

In case in which counsel was appointed under the Criminal Justice Act to handle murder defendant's direct appeal, remedy for appointed counsel's failure to perfect appeal of the denial of motion for postconviction relief would be to re-enter judgment so that an appeal from that order could be noted in the required manner, where appointed counsel filed postconviction

relief motion during pendency of direct appeal to raise claim of ineffectiveness of trial counsel. *Williams v. United States*, 783 A.2d 598, 2001 D.C. App. LEXIS 226 (2001).

Trial court was not required to conduct inquiry into defendant's pretrial claim of ineffective assistance when defendant told court he wanted new lawyer; defendant's general assertions that he wanted new lawyer did not constitute complaints concerning lack of preparation for trial sufficient to trigger trial court responsibility to conduct inquiry. U.S.C. Const. Amend. 6. *Robinson v. United States*, 565 A.2d 964, 1989 D.C. App. LEXIS 198 (1989).

In general.

Defendant's appellate counsel, who had been appointed under District of Columbia Criminal Justice Act, had statutory obligation to perfect appeal from denial of defendant's second motion for post-conviction relief, which was based on alleged ineffective assistance of defendant's trial counsel, if defendant made timely request for her to do so, where defendant's direct appeal was pending when appellate counsel filed second motion for post-conviction relief. U.S. Const. Amend. 6; D.C. Official Code, 859 A.2d 634 (2001).

Trial court should have responded to defendant's pretrial indications that he wanted new attorney, but trial court's error in failing to do so did not prejudice defendant in light of trial court's subsequently providing defendant opportunity to state basis for his desire for new attorney; after articulating nothing to indicate that he was dissatisfied with counsel's preparation for trial, defendant himself concluded he was ready and willing to go forward with that counsel. U.S. Const. Amend. 6. *Robinson v. United States*, 565 A.2d 964, 1989 D.C. App. LEXIS 198 (1989).

Once counsel has been selected for an indigent defendant, replacement of that counsel upon request of either the defendant or the attorney rests in the trial court's sound discretion. *Harling v. United States*, 387 A.2d 1101, 1978 D.C. App. LEXIS 522 (1978).

Defendant who was convicted of rape while armed had a right under the Criminal Justice Act (CJA) to have appointed counsel advise him of his rights under the rule governing motions to reduce sentence and to file a timely nonfrivolous motion to reduce sentence if requested to do so. *U.S. v. Bolanos a.k.a. Gomez*, 136 WLR 2401 (Super. Ct. 2008).

Reinstatement.

Fact that "the Court was paying for counsel, not the defendant" was not a satisfactory reason for trial court's refusal to reinstate appointed counsel in whom defendant had reposed his trust and who had been removed by the trial court without any justifiable basis.

Harling v. United States, 387 A.2d 1101, 1978 D.C. App. LEXIS 522 (1978).

Removal of attorney by court.

Once an attorney is serving under a valid appointment by the court and an attorney-client relationship has been established, the court may not arbitrarily remove the attorney over the objections of both the defendant and the attorney. U.S. Const. Amend. 6. Harling v. United States, 387 A.2d 1101, 1978 D.C. App. LEXIS 522 (1978).

Mere disagreement as to the conduct of the defense is certainly not sufficient to permit a trial judge to remove an appointed attorney. Harling v. United States, 387 A.2d 1101, 1978 D.C. App. LEXIS 522 (1978).

Though once counsel has been chosen, whether by the court or the accused, the accused is entitled to the assistance of that counsel at trial, the right to assistance of chosen counsel is not absolute and a trial judge may be justified in removing an attorney, even over the accused's objection, for gross incompetence or physical incapacity or because of contumacious conduct that cannot be cured by a citation for contempt. U.S. Const. Amend. 6; D.C. Code § 11-2603. Harling v. United States, 387 A.2d 1101, 1978 D.C. App. LEXIS 522 (1978).

Where record failed to disclose any justifiable basis for trial court's removal of defendant's appointed attorney, the action of the trial court, in removing the appointed attorney, apparently because of the attorney's efforts to obtain the names of prosecution witnesses, amounted to an unwarranted interference with defendant's attorney-client relationship and violated defendant's Sixth Amendment right to counsel. U.S.

Const. Amend. 6. Harling v. United States, 387 A.2d 1101, 1978 D.C. App. LEXIS 522 (1978).

Review.

When a convicted defendant entitled to representation under the Criminal Justice Act appeals his conviction, and while the direct appeal is pending appointed counsel files a motion for postconviction relief, counsel has the statutory duty to take the steps necessary to effect an appeal requested by the defendant from the denial of that motion, and failure to fulfill this duty requires that the order of denial be vacated and re-entered so that an appeal may be properly noted; overruling *Lee v. United States*, 597 A.2d 1333. *Williams v. United States*, 783 A.2d 598, 2001 D.C. App. LEXIS 226 (2001).

Consolidation of direct appeal with appeal of denial of postconviction relief is not required, and if appellate counsel believes that he has a meritorious issue in the direct appeal, he may request that the appeals not be consolidated and resolution of the direct appeal not be deferred, thus avoiding whatever additional delay the postconviction relief proceedings might add to the combined appeals. *Williams v. United States*, 783 A.2d 598, 2001 D.C. App. LEXIS 226 (2001).

Error of trial court in removing defendant's court-appointed attorney over defendant's objection and without any justifiable basis was not rendered harmless by reason of fact that defendant eventually received a competent defense through substitute counsel; the trial court's arbitrary infringement on defendant's right to assistance of counsel required reversal even though no prejudice was shown. U.S. Const. Amend. 6. Harling v. United States, 387 A.2d 1101, 1978 D.C. App. LEXIS 522 (1978).

§ 11-2604. Payment for representation.

(a) Any attorney appointed pursuant to this chapter shall, at the conclusion of the representation or any segment thereof, be compensated at a fixed rate of \$90 per hour. Such attorney shall be reimbursed for expenses reasonably incurred.

(b) The compensation to be paid to an attorney appointed pursuant to this chapter shall not exceed the following maximum amounts:

(1) For representation of a defendant before the Superior Court of the District of Columbia for misdemeanors or felonies, the maximum amount set forth in section 3006A(d)(2) of title 18, United States Code, for representation of a defendant before the United States magistrate judge or the district court for misdemeanors or felonies (as the case may be).

(2) For representation of a defendant before the District of Columbia Court of Appeals, the maximum amount set forth in section 3006A(d)(2) of title 18, United States Code, for representation of a defendant in an appellate court.

(3) For representation of a defendant in post-trial matters for misdemean-

ors or felonies, the amount applicable under paragraph (1) for misdemeanors or felonies (as the case may be).

(c) Claims for compensation and reimbursement in excess of any maximum amount provided in subsection (b) of this section may be approved for extended or complex representation whenever such payment is necessary to provide fair compensation. Any such request for payment shall be submitted by the attorney for approval by the chief judge of the Superior Court upon recommendation of the presiding judge in the case or, in cases before the District of Columbia Court of Appeals, approval by the chief judge of the Court of Appeals upon recommendation of the presiding judge in the case. A decision shall be made by the appropriate chief judge in the case of every claim filed under this subsection.

(d) A separate claim for compensation and reimbursement shall be made to the Superior Court for representation before that court, and to the District of Columbia Court of Appeals for representation before that court. Each claim shall be supported by a sworn written statement specifying the time expended, services rendered, and expenses incurred while the case was pending before the court, and the compensation and reimbursement applied for or received in the same case from any other source. The court shall fix the compensation and reimbursement to be paid to the attorney. In cases where representation is furnished other than before the Superior Court or the District of Columbia Court of Appeals, claims shall be submitted to the Superior Court which shall fix the compensation and reimbursement to be paid.

(e) For purposes of compensation and other payments authorized by this section, an order by a court granting a new trial shall be deemed to initiate a new case.

(f) If a person for whom counsel is appointed under this section appeals to the District of Columbia Court of Appeals, such person may do so without prepayment of fees and costs or security therefor and without filing the affidavit required by section 1915(a) of title 28, United States Code.

(Sept. 3, 1974, 88 Stat. 1091, Pub. L. 93-412, § 2; Jan. 31, 1984, D.C. Law 5-44, § 2, 30 DCR 5411; Aug. 6, 1993, D.C. Law 10-11, § 201, 40 DCR 4007; Sept. 30, 1993, D.C. Law 10-25, § 201, 40 DCR 5489; June 13, 1994, Pub. L. 103-266, § 1(b)(121), 108 Stat. 713; Sept. 26, 1995, D.C. Law 11-52, § 805, 42 DCR 3684; Dec. 21, 2001, 115 Stat. 928, Pub. L. 107-96, par. 20(a)(1), (c); Jan. 10, 2002, 115 Stat. 2307, Pub. L. 107-117, § 404; Oct. 2, 2008, 122 Stat. 3724, Pub. L. 110-335, § 1; Mar. 11, 2009, 123 Stat. 700, Pub. L. 111-8, § 822(a).)

Cross references. — Adult protection proceedings, representation of indigents, see § 7-1906.

Neglect and termination of parental rights proceedings, compensation of attorneys, see § 16-2326.01.

Section references. — This section is referred to in §§ 7-1906, 11-2603, and 16-2326.01.

Prior Codifications. — 1981 Ed., § 11-2604.

1973 Ed., § 11-2604.

Effect of amendments. — Pub. L. 107-96 substituted “\$65” for “\$50” in subsec. (a); and, in subsec. (b), substituted “\$1900” for “\$1300” twice, and substituted “\$3600” for “\$2450” twice.

Pub. L. 107-117 made a nonsubstantive change.

Pub. L. 110-335, in subsec. (a), substituted “\$80 per hour” for “\$65 per hour”; and rewrote subsec. (b).

Pub. L. 111-8, in subsec. (a), substituted “\$90 per hour” for “\$80 per hour”.

Temporary Amendment of Section. — Section 201 of D.C. Law 10-11 substituted “at a fixed rate of \$50 per hour” for “at a rate fixed by the Joint Committee on Judicial Administration, not to exceed the rate of \$35 per hour” in (a); substituted “\$1,300” for “\$900” in (b)(1) and (3); and substituted “\$2450” for “\$1700” in (b)(2) and (3).

Section 601(b)(5) of D.C. Law 10-11 provided that for services rendered as a result of court appointments made on or after October 1, 1993, Section 201 shall apply as of October 1, 1993.

Section 701(b) of D.C. Law 10-11 provided that the act shall expire on the 225th day of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 201 of the Omnibus Budget Support Emergency Act of 1993 (D.C. Act 10-32, June 3, 1993, 40 DCR 3658).

Legislative history of Law 5-44. — Law 5-44, the “District of Columbia Criminal Justice Act Amendments Act of 1983,” was introduced in Council and assigned Bill No. 5-128, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on September 20, 1983 and October 4, 1983, respectively. Signed by the Mayor on October 11, 1983, it was assigned Act No. 5-69 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-11. — D.C. Law 10-11, the “Omnibus Budget Support Temporary Act of 1993,” was introduced in Council and assigned Bill No. 10-259. The Bill was adopted on first and second readings on May 4, 1993, and June 1, 1993, respectively. Signed by the Mayor on June 15, 1993, it was assigned Act No. 10-39 and transmitted to both Houses of Congress for its review. D.C. Law 10-11 became effective on August 6, 1993.

Legislative history of Law 10-25. — D.C. Law 10-25, the “Omnibus Budget Support Act of 1993,” was introduced in Council and assigned Bill No. 10-165, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 1,

1993, and June 29, 1993, respectively. Signed by the Mayor on July 16, 1993, it was assigned Act No. 10-57 and transmitted to both Houses of Congress for its review. D.C. Law 10-25 became effective on September 30, 1993.

Legislative history of Law 11-52. — Law 11-52, the “Omnibus Budget Support Act of 1995,” was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Effective date. — Pub. L. 107-96, 115 Stat. 929, the District of Columbia Appropriations Act, 2002, provided in part:

“The amendments made by this provision shall apply with respect to cases and proceedings initiated on or after March 1, 2002.”

Section 2 of Pub. L. 110-335 provided: “The amendments made by this Act shall apply with respect to cases and proceedings initiated on or after the date of the enactment of this Act.”

Section 822(c) of Pub. L. 111-8 provided: “The amendments made by this section shall apply with respect to cases and proceedings initiated on or after the date of enactment of this Act.”

Editor’s notes. — Application of Law 5-44: Section 4(a) of D.C. Law 5-44 provided that the act shall apply to services rendered as a result of court appointments made after January 31, 1984.

Application of Law 10-25: Section 601(b)(5) of D.C. Law 10-25 provided that for services rendered as a result of court appointments made on or after October 1, 1993, section 201 shall apply as of October 1,

Expiration of § 805 of Law 11-52: Section 1701(b) of D.C. Law 11-52 provided that § 805 of the act shall expire on October 1, 1993.

Section 129 of Pub. L. 107-96, Dec. 21, 2001, 115 Stat. 923, and Section 128 of Pub. L. 108-7, Feb. 20, 2003, 117 Stat. 127, provided for the prompt payment of appointed counsel.

CASE NOTES

ANALYSIS

Construction and application.
In general.

Construction and application.

Provision of District of Columbia Appropriations Act imposing limits on fees the District could pay under Individuals with Disabilities Education Act (IDEA) to attorneys for prevailing parties did not apply to attorney fees sought by parent who had prevailed at administrative hearing on IDEA complaint against charter school; although a portion of charter school

budget came from District of Columbia funds, the cap applied only to District schools. *Brown v. Barbara Jordan P.C.S.*, 539 F.Supp.2d 436, 2008 U.S. Dist. LEXIS 24495 (2008).

In general.

Suit by lawyers and investigator against District of Columbia courts under Prompt Pay Act (PPA), seeking interest on fees for services rendered to indigent criminal defendants under District of Columbia Criminal Justice Act, invoked federal question jurisdiction; PPA was not exclusively applicable to District of Colum-

bia, since it applied to all federal agencies, Tennessee Valley Authority, and United States Postal Service, in addition to District of Columbia courts. *Roth v. D.C. Courts*, 160 F.Supp.2d 104, 2001 U.S. Dist. LEXIS 12852 (2001).

District court declined to exercise discretion to entertain suit by lawyers and investigator who provided services to indigent criminal defendants under District of Columbia Criminal Justice Act, against District of Columbia courts, seeking declaration that courts' method for determining when interest began to accrue on unpaid fees violated Prompt Pay Act (PPA); PPA precluded claim for monetary relief, which lawyers and investigator were required to pursue through administrative contracts dispute resolution process, and thus court's retention of declaratory judgment action would have resulted in piecemeal litigation. *Roth v. D.C. Courts*, 160 F.Supp.2d 104, 2001 U.S. Dist. LEXIS 12852 (2001).

Court appointed appellate counsel who requests postconviction relief on grounds of ineffective assistance of trial counsel is entitled to compensation. D.C. Code 1981, §§ 11-2601(3)(A), 11-2602, 23-110; U.S.C. Const.Amend. 6. *Doe v. United States*, 583 A.2d 670, 1990 D.C. App. LEXIS 310 (1990).

Appointments of counsel to represent indigent defendants under Criminal Justice Act and acceptance by counsel of such appointments did not create a contractual relationship between counsel and District of Columbia, whereby District of Columbia was obligated to provide compensation at maximum hourly rate in the Act, where the Act was never intended to create such a system, there was no language in the appointment form obligating trial judges to approve maximum rates, and voucher was merely the mechanism for effecting payment to counsel providing legal representation under the Act. D.C. Code §§ 11-2601 to 11-2609, 11-2604(a). *Thompson v. District of Columbia*, 407 A.2d 678, 1979 D.C. App. LEXIS 464 (1979).

It is intention of Criminal Justice Act that attorneys appointed thereunder be reasonably and fairly compensated; therefore, trial judges exercising their discretion in fixing an attorney's compensation and reimbursement pursuant to submission of a CJA voucher, should reduce amount represented by an attorney as being properly due only on an informed and rational basis. D.C. Code § 11-2604(a, d). *Thompson v. District of Columbia*, 407 A.2d 678, 1979 D.C. App. LEXIS 464 (1979).

§ 11-2605. Services other than counsel.

(a) Counsel for a person who is financially unable to obtain investigative, expert, or other services necessary for an adequate defense may request them in an ex parte application. Upon finding, after appropriate inquiry in an ex parte proceeding, that the services are necessary and that the person is financially unable to obtain them, the court shall authorize counsel to obtain the services.

(b) Counsel appointed under this section may obtain, subject to later review, investigative, expert, or other services, excluding the preparation of reporter's transcript, without prior authorization if necessary for an adequate defense. The total cost of services obtained without prior authorization may not exceed \$375 or the rate provided by § 3006A(e)(2) of title 18, United States Code, (or, in the case of investigative services, a fixed rate of \$25 per hour) whichever is higher, and expenses reasonably incurred.

(c) Compensation to be paid to a person for services rendered by such person to a person under this subsection shall not exceed \$750, or the rate provided by § 3006A(e)(3) of title 18, United States Code, (or, in the case of investigative services, a fixed rate of \$25 per hour) whichever is higher, exclusive of reimbursement for expenses reasonably incurred, unless payment in excess of that limit is certified by the court, as necessary to provide fair compensation for services of an unusual character or duration, and the amount of the excess payment is approved by the presiding judge in the case.

(Sept. 3, 1974, 88 Stat. 1092, Pub. L. 93-412, § 2; Jan. 31, 1984, D.C. Law 5-44, § 3, 30 DCR 5411; June 13, 1994, Pub. L. 103-266, § 1(b)(122), 108 Stat. 713;

Dec. 21, 2001, 115 Stat. 929, Pub. L. 107-96; Oct. 16, 2006, 120 Stat. 2024, Pub. L. 109-356, § 113(a).)

Cross references. — Neglect and termination of parental rights proceedings, compensation of attorneys, see § 16-2326.01.

Section references. — This section is referred to in §§ 7-1906, 11-2606, and 16-2326.01.

Prior Codifications. — 1981 Ed., § 11-2605.

1973 Ed., § 11-2605.

Effect of amendments. — Pub. L. 107-96 inserted a new subsec. (b) providing a fixed rate of compensation; and redesignated former subsecs. (b) and (c) as subsecs. (c) and (d).

Pub. L. 109-356 repealed former subsec. (b); redesignated former subsecs. (c) and (d) as subsecs. (b) and (c); and, in subsecs. (b) and (c), inserted "(or, in the case of investigative services, a fixed rate of \$25 per hour)". Prior to amendment, subsec. (b) read as follows: "(b) Subject to the applicable limits described in subsections (c) and (d), an individual providing services under this section shall be compensated at a fixed rate of \$25 per hour, and shall be reimbursed for expenses reasonably incurred."

Legislative history of Law 5-44. — For legislative history of D.C. Law 5-44, see Historical and Statutory Notes following § 11-2604.

Effective date. — Pub. L. 107-96, 115 Stat. 923, the District of Columbia Appropriations Act, 2002, provided in part:

"The amendments made by this provision shall apply with respect to cases and proceedings initiated on or after March 1, 2002."

Section 113(b) of Pub. L. 109-356 provided that the amendment made by subsection (a) shall apply with respect to pay periods beginning on or after the date of the enactment of this Act [October 16, 2006].

Editor's notes. — Prompt Payment of Appointed Counsel. Section 129 of Pub. L. 107-96, Dec. 21, 2001, 115 Stat. 929, provided:

"(a) **ASSESSMENT OF INTEREST FOR DELAYED PAYMENTS.**—If the Superior Court of the District of Columbia or the District of Columbia Court of Appeals does not make a payment described in subsection (b) prior to the expiration of the 45-day period which begins on the date the Court receives a completed voucher for a claim for the payment, interest shall be assessed against the amount of the payment which would otherwise be made to take into account the period which begins on the day after the expiration of such 45-day period and which ends on the day the Court makes the payment.

"(b) **PAYMENTS DESCRIBED.**—A payment described in this subsection is —

"(1) a payment authorized under section 11-2604 and section 11-2605, D.C. Code (relating to representation provided under the District of Columbia Criminal Justice Act);

"(2) a payment for counsel appointed in proceedings in the Family Division of the Superior Court of the District of Columbia under chapter 23 of title 16, D.C. Code; or

"(3) a payment for counsel authorized under section 21-2060, D.C. Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986).

"(c) **STANDARDS FOR SUBMISSION OF COMPLETED VOUCHERS.**—The chief judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals shall establish standards and criteria for determining whether vouchers submitted for claims for payments described in subsection (b) are complete, and shall publish and make such standards and criteria available to attorneys who practice before such Courts.

"(d) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to require the assessment of interest against any claim (or portion of any claim) which is denied by the Court involved.

"(e) **Effective Date.**—This section shall apply with respect to claims received by the Superior Court of the District of Columbia or the District of Columbia Court of Appeals during fiscal year 2002, and claims received previously that remain unpaid at the end of fiscal year 2001, and would have qualified for interest payment under this section."

Prompt Payment of Appointed Counsel. Section 128 of Pub. L. 108-7, Feb. 24, 2003, 117 Stat. 11, provided:

"(a) If the Superior Court of the District of Columbia or the District of Columbia Court of Appeals does not make a payment described in subsection (b) prior to the expiration of the 45-day period which begins on the date the Court receives a completed voucher for a claim for the payment, interest shall be assessed against the amount of the payment which would otherwise be made to take into account the period which begins on the day after the expiration of such 45-day period and which ends on the day the Court makes the payment.

"(b) A payment described in this subsection is—

"(1) a payment authorized under section 11-2604 and section 11-2605, D.C. Official Code (relating to representation provided under the District of Columbia Criminal Justice Act);

"(2) a payment for counsel appointed in proceedings in the Family Court of the Superior

Court of the District of Columbia under chapter 23 of title 16, D.C. Official Code; or

“(3) a payment for counsel authorized under section 21-2060, D.C. Official Code (relating to representation provided under the District of Columbia Guardianship, Protective Proceedings, and Durable Power of Attorney Act of 1986).

“(c) The chief judges of the Superior Court of the District of Columbia and the District of Columbia Court of Appeals shall establish standards and criteria for determining whether vouchers submitted for claims for payments

described in subsection (b) are complete, and shall publish and make such standards and criteria available to attorneys who practice before such Courts.

“(d) Nothing in this section shall be construed to require the assessment of interest against any claim (or portion of any claim) which is denied by the Court involved.

“(e) This section shall apply with respect to claims received by the Superior Court of the District of Columbia or the District of Columbia Court of Appeals during fiscal year 2003 and any subsequent fiscal year.”

CASE NOTES

ANALYSIS

Ex parte proceeding.

In general.

Medical expert witnesses.

Psychiatrist services.

—In general.

—Prior exams or assistance, psychiatrist services.

Review and remand.

Ex parte proceeding.

Request for order for defense-related services should be determined at *ex parte* proceeding to afford defendant opportunity to present request to court without prematurely disclosing merits of defense to prosecution, thus, presence of prosecutor during hearing on defendant's request to be examined by private psychiatrist was error in prosecution for murder and arson. D.C. Code § 11-2605(a). *Gaither v. United States*, 391 A.2d 1364, 1978 D.C. App. LEXIS 311 (1978).

In general.

Criminal defendant is entitled to the services of an expert, if he is financially unable to obtain the expert's services and the services are necessary to an adequate defense. *Porter v. United States*, 769 A.2d 143, 2001 D.C. App. LEXIS 65 (2001).

Decision to authorize defense counsel to obtain an expert is entrusted to the sound discretion of the trial court. *Porter v. United States*, 769 A.2d 143, 2001 D.C. App. LEXIS 65 (2001).

Trial court must provide a defendant with expert services whenever there has been a showing that the accused is financially unable to obtain the service and the service is necessary to an adequate defense. *Jackson v. United States*, 768 A.2d 580, 2001 D.C. App. LEXIS 50 (2001).

In considering indigent defendant's request for expert services, the trial court should tend to rely on the judgment of defense counsel who has the primary duty of providing an adequate defense, although the court does not act as a

rubber stamp. *Jackson v. United States*, 768 A.2d 580, 2001 D.C. App. LEXIS 50 (2001).

Indigent defendant's request for expert services must be evaluated on a standard of reasonableness, focusing on whether a reasonable attorney would pursue such services in aid of a defense, but recognizing that the state need not purchase for the indigent defendant all the assistance that his wealthier counterpart might buy. *Jackson v. United States*, 768 A.2d 580, 2001 D.C. App. LEXIS 50 (2001).

Indigent defendant was not entitled to services of fingerprint expert at public expense to challenge failure of police to attempt to obtain fingerprint from plastic bag containing cocaine; defendant had alternative means to present that issue to jury, and that evidence likely would not have appreciably assisted jury in resolving issue of guilt. *Jackson v. United States*, 768 A.2d 580, 2001 D.C. App. LEXIS 50 (2001).

After defendant was permitted to subpoena and cross-examine Drug Enforcement Administration chemist whose affidavit established chain of custody and provided chemical analysis of suspected controlled substances, trial court properly refused to comply with defendant's request for an independent chemist; defendant made no showing that independence and general reliability of DEA chemist would not result in accurate test of substances seized. D.C. Code 1981, §§ 11-2605(a), 33-556. *Berry v. United States*, 528 A.2d 1209, 1987 D.C. App. LEXIS 407 (1987).

Court must provide a defendant with expert services authorized under statute whenever there has been a showing that the accused is financially unable to obtain the service and the service is necessary to an adequate defense. D.C. Code § 11-2605(a). *Dobson v. United States*, 426 A.2d 361, 1981 D.C. App. LEXIS 219 (1981).

Expert appointed pursuant to statute governing order for defense-related services is not primarily aid to court; purpose of expert's appointment is to provide expert service neces-

sary to adequate defense, thus such expert may be partisan witness whose conclusions and opinions need not be reported to either court or prosecution. D.C. Code § 11-2605(a). *Gaither v. United States*, 391 A.2d 1364, 1978 D.C. App. LEXIS 311 (1978).

Medical expert witnesses.

Trial court did not abuse its discretion in denying rape defendant's request for funds to consult with expert witness, where defendant failed adequately to address court's reasonable concern that intended expert, a state's chief medical examiner, did not qualify as expert in detection of sperm in living rape victims. *Porter v. United States*, 769 A.2d 143, 2001 D.C. App. LEXIS 65 (2001).

Psychiatrist services.

— In general.

Respondent in civil commitment case is entitled to services of psychiatric expert upon a showing of financial inability to obtain the expert and the demonstration that the service is necessary to an adequate defense; deference must be given to judgment of counsel, but that does not prevent trial court from exercising its discretion. D.C. Code 1981, § 11-2605(a, c). In *re Morrow*, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

In civil commitment case, trial court did not abuse its discretion in failing to authorize payment for a second psychiatric expert until the day of trial, because neither counsel's oral argument nor his memorandum in support thereof provided compelling justification for the second expert, counsel sought to introduce expert's theory of dangerousness and not his personal observation of respondent, and trial court ultimately granted respondent's mid-trial motion to authorize payment for expert testimony. D.C. Code 1981, § 11-2605(a, c). In *re Morrow*, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

In determining whether psychiatric assistance is necessary to the defense, trial court should tend to rely on judgment of defense counsel who has primary duty of providing an adequate defense, but court should not act merely as a rubber stamp for defense counsel and should consider other factors, including defendant's prior psychological history, reports concerning defendant's mental state, opinions of those who have observed the defendant, and the trial court's own assessment of the defendant's demeanor. D.C. Code § 11-2605(a, c). *Dobson v. United States*, 426 A.2d 361, 1981 D.C. App. LEXIS 219 (1981).

Where financially eligible defendant had been recently adjudged incompetent to stand trial by qualified court-appointed psychiatric staff, and had history, albeit limited, of psychiatric problems, and where defense counsel in

good faith asserted that there was a basis for insanity defense and requested independent, private psychiatrist, trial court erred in denying defendant's pretrial motion for appointment of private psychiatric expert to assist in preparation of insanity defense. D.C. Code § 11-2605(a). *Dobson v. United States*, 426 A.2d 361, 1981 D.C. App. LEXIS 219 (1981).

Psychiatric assistance in preparing insanity defense comes within statute governing court order for services of expert upon showing that defendant is financially unable to obtain service and service is necessary to adequate defense. D.C. Code § 11-2605(a). *Gaither v. United States*, 391 A.2d 1364, 1978 D.C. App. LEXIS 311 (1978).

Evidence of mental disorder of defendant supported defense request for private psychiatrist to be appointed to assist defendant and attorney in determining whether proper basis for insanity defense existed and developing such defense if justified, and thus denial of request was abuse of discretion in prosecution for murder and arson. D.C. Code § 11-2605(a). *Gaither v. United States*, 391 A.2d 1364, 1978 D.C. App. LEXIS 311 (1978).

In determining whether services of psychiatric expert are necessary to adequate defense for purposes of statute governing court order for defense-related services, question before court is not whether defendant was insane at time he committed offense but whether evidence of mental disorder is such that reasonable attorney would pursue sanity defense; in making such determination, court should tend to rely on judgment of defense counsel who has primary duty of providing adequate defense. D.C. Code § 11-2605(a). *Gaither v. United States*, 391 A.2d 1364, 1978 D.C. App. LEXIS 311 (1978).

Court need not appoint psychiatrist to assist defendant pursuant to statute governing order for defense-related services if there is absolutely no reason to think plea of insanity would be successful; in determining whether psychiatric assistance is necessary, court should consider defendant's prior psychological history, and reports concerning his mental state, opinion of those who have had opportunity to view him, record and court's own evaluation of defendant's demeanor. D.C. Code § 11-2605(a). *Gaither v. United States*, 391 A.2d 1364, 1978 D.C. App. LEXIS 311 (1978).

— Prior exams or assistance, psychiatrist services.

In civil commitment case, trial court appropriately denies a request for services of psychiatric expert when respondent has received adequate psychiatric assistance from other sources. D.C. Code 1981, § 11-2605(a, c). In *re Morrow*, 463 A.2d 689, 1983 D.C. App. LEXIS 421 (1983).

Court may deny a request for order for defense related services on basis that defendant already had received sufficient psychiatric assistance to prepare his defense, but provision for psychiatric examination of defendant under statute is not dispositive of this inquiry since task of court-appointed psychiatric expert essentially is to provide the court, in a neutral and detached manner, with evaluation of accused's competency to stand trial or of defendant's sanity at time of commission of offense; however, the expert provided to aid in an adequate defense acts as a consultant to the defendant, not to the court his main purpose being to help determine whether there is reasonable basis for an insanity defense. D.C. Code §§ 11-2605(a), 24-301(a). *Dobson v. United States*, 426 A.2d 361, 1981 D.C. App. LEXIS 219 (1981).

Fact that defendant charged with felony-murder, second-degree murder while armed, second-degree murder, attempted robbery while armed, attempted robbery, and carrying a pistol without a license was examined by court-appointed psychiatrists in order to determine his competency to stand trial and his sanity at time offense was committed did not render examination of defendant by private psychiatrist unnecessary for purposes of statute governing court order for defense related services. D.C. Code §§ 11-2605(a), 24-301(a). *Dobson v. United States*, 426 A.2d 361, 1981 D.C. App. LEXIS 219 (1981).

Court may deny request for psychiatric assistance under statute governing order for defense-related services if defendant has received sufficient psychiatric assistance from other sources to develop adequate defense. D.C. Code § 11-2605(a). *Gaither v. United States*, 391 A.2d 1364, 1978 D.C. App. LEXIS 311 (1978).

Fact that defendant charged with murder and arson had, on more than one occasion, been examined by staff psychiatrist at hospital as to competency to stand trial and sanity at time

offense was committed did not render examination of defendant by private psychiatrist unnecessary for purposes of statute governing court order for defense-related services. D.C. Code §§ 11-2605(a), 24-301(a). *Gaither v. United States*, 391 A.2d 1364, 1978 D.C. App. LEXIS 311 (1978).

Review and remand.

Any error in trial court's denial of rape defendant's request for funds to consult with expert witness was harmless, where court's concern that particular expert with whom defendant sought to consult was not qualified to testify would have led it to reserve right to disallow expert's testimony at trial, and where other evidence against defendant was overwhelming. *Porter v. United States*, 769 A.2d 143, 2001 D.C. App. LEXIS 65 (2001).

Error was harmless with respect to exclusion of expert testimony that police might have been able to obtain fingerprint sample from plastic bag containing cocaine had they tried to do so; defendant had other means to raise the issue of officers' failure to attempt to obtain fingerprint sample, and that defense had a serious problem of plausibility in light of other evidence. *Jackson v. United States*, 768 A.2d 580, 2001 D.C. App. LEXIS 50 (2001).

Where there was no error at trial other than denial of defendant's motion for a court-appointed psychiatrist, case would be remanded and trial court directed to appoint psychiatric expert pursuant to statute authorizing appointment of experts to aid the defense; jury's disposition of case remained undisturbed and conviction would stand unless court-appointed private psychiatrist provided defense counsel with reasonable basis upon which to pursue insanity defense and the jury subsequently determined that defendant was insane at the time he committed acts in question. D.C. Code § 11-2605(a). *Dobson v. United States*, 426 A.2d 361, 1981 D.C. App. LEXIS 219 (1981).

§ 11-2606. Receipt of other payments.

(a) Whenever the court finds that funds are available for payment from or on behalf of a person furnished representation, it may authorize or direct that such funds be paid to the appointed attorney, or to any person or organization authorized pursuant to section 2605 of this title [11-2605] to render investigative, expert, or other services, or to the court for deposit in the Treasury as a reimbursement to the appropriation, current at the time of payment, to carry out the provisions of this section. Except as so authorized or directed, no such person or organization may request or accept any payment or promise of payment for representing a defendant.

(b) Any person compensated, or entitled to be compensated, for any services rendered under this chapter who shall seek, ask, demand, receive, or offer to receive, any money, goods, or services in return therefor from or on behalf of a

defendant or respondent shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(Sept. 3, 1974, 88 Stat. 1092, Pub. L. 93-412, § 2.)

Section references. — This section is referred to in § 11-2603.

Prior Codifications. — 1981 Ed., § 11-2606.

1973 Ed., § 11-2606.

CASE NOTES

ANALYSIS

Construction and application.
Entitlement to compensation.
Evidence.
In general.
Instructions.
Practice and procedure, generally.
Purpose.
Validity.

Construction and application.

Statute prohibiting one who is entitled to compensation under the Criminal Justice Act from seeking fee from his client can be constitutionally construed to encompass the action of attorney indicating that he would probably be able to get defendant out of jail if he were to receive some additional funds from defendant or his family. D.C. Code § 11-2606(b). *Willcher v. United States*, 408 A.2d 67, 1979 D.C. App. LEXIS 513 (1979).

Statute prohibiting one subject to compensation under Criminal Justice Act from seeking fee from client must be read in conjunction with provision of Criminal Justice Act authorizing court which finds that funds are available for payment on behalf of indigent who has been furnished with representation to direct that those funds be paid to the attorney who has represented the indigent, so that trial court, in defendant's trial for soliciting fee from indigent whom he had been appointed to represent, did not err in instructing jury on the other statutory provision as well. D.C. Code § 11-2606(a, b). *Willcher v. United States*, 408 A.2d 67, 1979 D.C. App. LEXIS 513 (1979).

Entitlement to compensation.

For purposes of statute prohibiting attorney who is entitled to compensation under the Criminal Justice Act from soliciting compensation from his client, an attorney becomes entitled to compensation when he undertakes representation of the indigent client knowing that the client has been found eligible for public assistance; fact that attorney has not filed payment voucher does not preclude him from falling within the category of "entitled to compensation" and thus barred from soliciting a fee.

D.C. Code § 11-2606(b). *Willcher v. United States*, 408 A.2d 67, 1979 D.C. App. LEXIS 513 (1979).

Evidence.

In prosecution of attorney for soliciting a fee for legal representation of an indigent, though prior testimony of the attorney before a grand jury was admissible in rebuttal, those portions of the grand jury transcript that contained statements by grand jurors that were inflammatory or accusatory or merely reflected the grand jurors' personal opinions should have been deleted. D.C. Code § 11-2606(b). *Gregory v. United States*, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

In prosecution of attorney for soliciting a fee for legal representation of an indigent, it was reversible error for trial court to refuse to delete certain prejudicial remarks of grand jurors that were included in transcript of the attorney's prior grand jury testimony that was read to the jury as part of prosecution's rebuttal; all inflammatory and prejudicial statements by members of the grand jury should have been excluded from the transcript before the prosecution was allowed to introduce it in evidence. D.C. Code § 11-2606(b). *Gregory v. United States*, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

In prosecution of attorney for soliciting a fee for legal representation of indigent client wherein it was the attorney's defense that the client had indicated he could afford to pay the attorney and had misled the Criminal Justice Act administrator as to his financial status, it was not error for the Government to call judge who presided at client's arraignment to testify in rebuttal that when the attorney and the client returned to the courtroom from the Criminal Justice Act administrator's office, the judge determined that the client was eligible for representation under the Act and that the attorney would represent him in that capacity. D.C. Code § 11-2606(b). *Gregory v. United States*, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

In general.

Acceptance of payment from defendant for services performed in the very same case in

which attorney has been appointed to represent defendant free of charge is presumptively prejudicial to administration of Criminal Justice Act system, if for no other reason than because of belief it likely will instill in defendant that quality of his representation may yet depend upon gathering together funds to compensate attorney whom he has not selected. Code of Prof.Resp., DR 1-102(A)(5); D.C. Code 1981, § 11-2606(a). In re L.R., 640 A.2d 697, 1994 D.C. App. LEXIS 49 (1994).

Agreeing to accept payment from defendant, while under appointment to represent him in the very case free of charge, merits informal admonition. Code of Prof.Resp., DR 1-102(A)(5); D.C. Code 1981, § 11-2606(a). In re L.R., 640 A.2d 697, 1994 D.C. App. LEXIS 49 (1994).

Statute prohibiting appointed counsel in criminal case from requesting or accepting any payment or promise of payment for representing defendant bars acceptance of payment from defendant for services performed in very same case in which attorney has been appointed to represent defendant free of charge. D.C. Code 1981, § 11-2606(a). In re L.R., 640 A.2d 697, 1994 D.C. App. LEXIS 49 (1994).

Unlawful solicitation of money from indigent defendant whom attorney is appointed to represent constitutes moral turpitude mandating permanent disbarment. D.C. Code 1973, § 11-2503(a); D.C. Code 1978 Supp. § 11-2606(b). In re Willcher, 447 A.2d 1198, 1982 D.C. App. LEXIS 388 (1982).

Attorney's knowledge of his client's entitlement to free counsel is an element of offense of soliciting fee from client by one who is entitled to compensation under the Criminal Justice Act. D.C. Code § 11-2606(b). Willcher v. United States, 408 A.2d 67, 1979 D.C. App. LEXIS 513 (1979).

Instructions.

In prosecution of attorney for soliciting a fee for legal representation of an indigent, trial court did not err in refusing to instruct the jury that the attorney could be convicted only if the jury found that he sought compensation both from the indigent and under the Criminal Justice Act. D.C. Code § 11-2606(b). Gregory v. United States, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

Practice and procedure, generally.

Allegation of attorney, charged with soliciting a fee for legal representation of an indigent, that he was prejudiced by having to appear before the same judge against whom he had sought a writ of mandamus and who had held him in contempt in a prior proceeding was not legally sufficient to justify recusal. D.C. Code SCR, Civil Rule 63-1; D.C. Code § 11-2601 et seq. Gregory v. United States, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

Allegation of attorney, charged with soliciting a fee for legal representation of an indigent, that the judge before whom he was to appear had previously reduced the attorney's claims for compensation under the Criminal Justice Act was not a ground for recusal of the trial judge; alleged action of judge in reducing fees was exercise of judicial function and did not constitute bias. D.C. Code SCR, Civil Rule 63-1. Gregory v. United States, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

Record did not support claim of defendant, an attorney charged with soliciting a fee for legal representation of an indigent, that the trial judge's rulings evidenced hostility toward defendant and deprived him of a fair trial. D.C. Code § 11-2606(b). Gregory v. United States, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

Purpose.

In enacting the District of Columbia Criminal Justice Act, Congress did intend to prevent double payments to attorneys appointed under the Act; however, Congress sought also to make it illegal for a court-appointed attorney to request or accept a fee from his indigent client. D.C. Code § 11-2606(b). Gregory v. United States, 393 A.2d 132, 1978 D.C. App. LEXIS 342 (1978).

Validity.

Statute prohibiting one who is entitled to compensation under the Criminal Justice Act from seeking fee from his client does not implicate First Amendment free speech rights and thus is not required to meet greater degree of specificity applicable to statutes involving First Amendment rights and is not subject to challenge as overbroad by one to whom it may constitutionally applied. D.C. Code § 11-2606(b); U.S. Const. Amend. 1. Willcher v. United States, 408 A.2d 67, 1979 D.C. App. LEXIS 513 (1979).

In view of court's prior interpretation of the language "entitled to compensation," as used in statute prohibiting an attorney entitled to compensation under the District of Columbia Criminal Justice Act from soliciting a fee from his client, that term in the statute was not unconstitutionally vague. D.C. Code § 11-2606(b). Willcher v. United States, 408 A.2d 67, 1979 D.C. App. LEXIS 513 (1979).

The term "services rendered" as used in statute prohibiting any attorney entitled to compensation under the Criminal Justice Act from seeking a fee from his client for services rendered is not unconstitutionally vague. D.C. Code § 11-2606(b). Willcher v. United States, 408 A.2d 67, 1979 D.C. App. LEXIS 513 (1979).

Statute prohibiting one who is entitled to compensation under the Criminal Justice Act from seeking a fee from his client is not uncon-

stitutionally vague on theory that it fails to define with sufficient specificity the type of attorney-client contact proscribed. D.C. Code § 11-2606(b). *Willcher v. United States*, 408 A.2d 67, 1979 D.C. App. LEXIS 513 (1979).

Statute prohibiting one who is entitled to compensation under the Criminal Justice Act

from seeking a fee from his client is sufficiently specific to put reasonable person on notice that certain conduct, solicitation or acceptance of fee by court-appointed attorney from his indigent client, is deemed criminal. D.C. Code § 11-2606(b). *Willcher v. United States*, 408 A.2d 67, 1979 D.C. App. LEXIS 513 (1979).

§ 11-2607. Preparation of budget.

The joint committee shall prepare and include in its annual budget requests for the District of Columbia court system estimates of the expenditures and appropriations necessary for furnishing representation by private attorneys to persons entitled to representation in accordance with section 2601 of this title [11-2601].

(Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, § 1(b)(123), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 760, Pub. L. 105-033, § 11262(a).)

Prior Codifications. — 1981 Ed., § 11-2607. 1973 Ed., § 11-2607.

§ 11-2608. Authorization of appropriations.

There are authorized to be appropriated for payment to the Joint Committee on Judicial Administration in the District of Columbia such sums as may be necessary to pay for representation by private attorneys and related services under this chapter. When so specified in appropriation Acts, such appropriations shall remain available until expended.

(Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2; June 15, 1976, D.C. Law 1-69, § 2, 23 DCR 531; Aug. 5, 1997, 111 Stat. 760, Pub. L. 105-033, § 11262(b); Oct. 21, 1998, 112 Stat. 2425, Pub. L. 105-274, § 6(b)(1).)

Prior Codifications. — 1981 Ed., § 11-2608.

1973 Ed., § 11-2608.

Legislative history of Law 1-69. — Law 1-69, the "Criminal Justice Supervisory Board Act of 1978," was introduced in Council and assigned Bill No. 1-211 which was referred to

the Committee on the Judiciary and the Committee on Criminal Law. The Bill was adopted on first and second readings on February 24, 1976 and March 9, 1976, respectively. Signed by the Mayor on March 29, 1976, it was assigned Act No. 1-102 and transmitted to both Houses of Congress for its review.

§ 11-2609. Authority of Council. [Repealed].

Repealed.

(Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2; Aug. 5, 1997, 111 Stat. 760, Pub. L. 105-33, § 11262(c)(1).)

Cross references. — Joint contracts, action for breach, compulsory joinder of representatives of deceased defendant, see § 16-2104.

Prior Codifications. — 1981 Ed., § 11-2609.

1973 Ed., § 11-2609.

Effective date. — Pub. L. 105-33, title XI, § 11721, Aug. 5, 1997, 111 Stat. 786, provided: "Sec. 11721. Effective Date. Except as otherwise provided in this title, the provisions of this

title shall take effect on the later of October 1, 1997, or the day the District of Columbia Financial Responsibility and Management Assistance Authority certifies that the financial plan and budget for the District government for fiscal year 1998 meet the requirements of section 201(c)(1) of the District of Columbia Finan-

cial Responsibility and Management Assistance Act of 1995, as amended by this title."

Editor's notes. — Prior to repeal by Pub. L. 105-33, this section read: "Section 602 (a) (4) of the District of Columbia Self-Government and Governmental Reorganization Act shall not apply to this chapter."

TITLE 12. RIGHT TO REMEDY.

Chapter

1. Abatement and Revivor.
3. Limitation of Actions.

CHAPTER 1. ABATEMENT AND REVIVOR.

Sec.

12-101. Survival of rights of action.

12-102. Substitution of parties.

12-103. Judgment and costs in case of new party.

Sec.

12-104. Marriage of party.

§ 12-101. Survival of rights of action.

On the death of a person in whose favor or against whom a right of action has accrued for any cause prior to his death, the right of action, for all such cases, survives in favor of or against the legal representative of the deceased.

(Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1; Aug. 2, 1978, D.C. Law 2-95, § 2, 25 DCR 1270.)

Cross references. — Dissolution of corporations, effect, see §§ 29-101.88, 29-221.16 et seq.

Wrongful death actions, see § 16-2701 et seq.

Prior Codifications. — 1981 Ed., § 12-101. 1973 Ed., § 12-101.

Legislative history of Law 2-95. — Law 2-95, the “District of Columbia General Survival of Tort Act,” was introduced in Council and assigned Bill No. 2-52, which was referred to the Committee on the Judiciary. The Bill was

adopted on first and second readings on April 18, 1978 and May 2, 1978, respectively. There being no action by the Mayor, it was assigned Act No. 2-199 and transmitted to both Houses of Congress for its review.

Editor’s notes. — Section 24 of D.C. Law 15-354 provided that Title 12 is designated Title 12 of the District of Columbia Official Code.

CASE NOTES

ANALYSIS

Accrual of right of action.
Admissibility of evidence.
Causes of action which survive.
Damages.
—Double recovery, damages.
—In general.
Death of fetus.
In general.
Instructions.
Jurisdiction.
Law governing.
Limitations.
—In general.
—Tolling, limitations.
Persons entitled to sue.
Pleadings.
Practice and procedure, generally.
Purpose.
Questions for jury.
Res judicata.

Summary judgment.

Validity.

Wrongful Death Act distinguished.

Accrual of right of action.

Action provided for by Survival Act does not arise from death but from injury itself, as Act preserves for benefit of decedent’s estate cause of action which deceased would have had had he not died, and accordingly, survival action generally accrues on date of decedent’s injury, not on date of decedent’s death. D.C. Code 1981, § 12-101. *Arrington v. District of Columbia*, 673 A.2d 674, 1996 D.C. App. LEXIS 61 (1996).

Cause of action for wrongful death arises only if the deceased could have brought cause of action for injuries if death had not ensued, and cause of action for injuries survives deceased’s death only if cause of action accrued prior to death. D.C. Code 1981, §§ 12-101, 16-2701. *Greater Southeast Community Hospital v. Wil-*

liams, 482 A.2d 394, 1984 D.C. App. LEXIS 495 (1984).

Survival statute recognizes that liability to victim should not be extinguished by fortuitous event of death and, therefore, action provided by the survival statute does not arise from the death but by the injury itself; statute does not create new cause of action for designated beneficiaries, as does the wrongful death statute, but instead preserves for the benefit of the decedent's estate the cause of action which the deceased would have had, had he not died. D.C. Code 1981, §§ 12-101, 16-2701. *Greater Southeast Community Hospital v. Williams*, 482 A.2d 394, 1984 D.C. App. LEXIS 495 (1984).

Admissibility of evidence.

Trial court, in suit by widow and children of individual shot by police detective against the District of Columbia under the Wrongful Death Act and survival statute, did not abuse its discretion in admitting circumstances leading up to the shooting. D.C. Code 1973, §§ 11-921, 12-101, 16-2701. *District of Columbia v. White*, 442 A.2d 159, 1982 D.C. App. LEXIS 299 (1982).

In action to recover under survival statute following death of 16-year-old boy, trial court did not abuse its discretion in ruling inadmissible an economist's projection of future lost earnings based solely on socioeconomic status of decedent's family, where economist failed to consider factors such as decedent's school grades, intelligence level, or arrest record and weight expert assigned to various occupational categories did not reflect accurately the probability that decedent would have actually entered one of those occupations. D.C. Code § 12-101. *Hughes v. Pender*, 391 A.2d 259, 1978 D.C. App. LEXIS 561 (1978).

Refusal to allow introduction of evidence with respect to damages for physical incapacitation or disability of decedent in negligence action under Survival of Rights of Actions Act was harmless error where jury found that defendant taxicab company's driver was not responsible for decedent's fall on seat of cab as she entered vehicle, and plaintiff executrix was thus not entitled to recover even special damages for which adequate proof had been submitted to jury. D.C. Code 1961, § 12-101. *Sullivan v. Yellow Cab Co.*, 212 A.2d 616, 1965 D.C. App. LEXIS 233 (App. 1965).

Causes of action which survive.

District of Columbia survival of actions statute creates no new right of action and permits survival of right of action that accrued to deceased. D.C. Code § 12-101. *Jones v. Rogers Memorial Hospital*, 442 F.2d 773, 1971 U.S. App. LEXIS 12055 (C.A.D.C. 1971).

1963 amendment to survival statute did not change rule that action for libel and slander

does not survive death of defendant. D.C. Code § 12-101. *Wender v. Hamburger*, 393 F.2d 365, 1968 U.S. App. LEXIS 7436 (C.A.D.C. 1968).

Suit for partition of joint tenancy is not a "right of action" of type contemplated by District of Columbia survival statute, and statute is inapplicable to suits for partition of joint tenancies. D.C. Code 1961, § 12-101. *Cobb v. Gilmer*, 365 F.2d 931, 1966 U.S. App. LEXIS 5541 (C.A.D.C. 1966).

Pending suit for partition of joint tenancy does not survive death of one of the tenants, because at moment of death title vests exclusively in surviving joint tenant, and because severance of joint tenancy does not occur until suit for partition reaches final judgment. *Cobb v. Gilmer*, 365 F.2d 931, 1966 U.S. App. LEXIS 5541 (C.A.D.C. 1966).

Under District of Columbia law, common law tort claims did not survive decedent's death, and thus were to be merged with statutory survival claims. *Henson v. W.H.H Trice & Co.*, 466 F.Supp.2d 187, 2006 U.S. Dist. LEXIS 91995 (2006).

Under District of Columbia law, plaintiff had standing to bring survival claims on behalf of estate and wrongful death claims on behalf of decedent's next of kin solely in her capacity as personal representative of estate of decedent, not individually, as mother of decedent, or as next friend of decedent's siblings. *Henson v. W.H.H Trice & Co.*, 466 F.Supp.2d 187, 2006 U.S. Dist. LEXIS 91995 (2006).

At common law, no cause of action existed for the death of a human being, and a victim's cause of action for tortious injury was extinguished by death of the tort-feasor or his victim. *Greater Southeast Community Hospital v. Williams*, 482 A.2d 394, 1984 D.C. App. LEXIS 495 (1984).

A defamation action does not survive the death of either party. *Waldon v. Covington*, 415 A.2d 1070, 1980 D.C. App. LEXIS 303 (1980).

Statute providing that on death of person for or against whom right of action accrued prior to death, right of action shall survive, provided that in tort actions, right of action shall be limited to damages for physical injury except for pain and suffering precludes recovery for pain and suffering where either injured party or wrongdoer has died prior to trial. D.C. Code 1967, § 12-101. *Bogen v. Green*, 239 A.2d 154, 1968 D.C. App. LEXIS 133 (App. 1968).

A claim for loss of consortium is not encompassed by the Survival Act, which authorizes only a right of action accrued by or against the decedent himself. *Bonan v. Washington Hosp. Ctr.*, 119 WLR 1685 (Super. Ct. 1991).

The Survival Act does not create a new right of action for designated beneficiaries, rather, it preserves and carries forward for the benefit of the decedent's estate the right of action that the decedent would have had, had he not died.

Bonan v. Washington Hosp. Ctr., 119 WLR 1685 (Super. Ct. 1991).

Damages.

— Double recovery, damages.

Where evidence in suit under Wrongful Death Act and the Survival Statute established that discounted present value of decedent's probable future net income amounted to \$186,800, award of \$65,000 under both statutes did not amount to prohibited double recovery. D.C. Code §§ 12-101, 16-2701, 16-2702. *Runyon v. District of Columbia*, 463 F.2d 1319, 1972 U.S. App. LEXIS 8365 (C.A.D.C. 1972).

Double recovery for same element of damage under wrongful death and survival statutes should be avoided. D.C. Code §§ 12-101, 16-2701. *Waldon v. Covington*, 415 A.2d 1070, 1980 D.C. App. LEXIS 303 (1980).

While certain factors, e. g., projected future income of the decedent, may be relevant to damages under both the Survival Act and the Wrongful Death Act, double recovery for the same elements of damage are to be avoided. D.C. Code §§ 12-101, 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

— In general.

Under the Survival Statute it is proper for the estate of the deceased to recover an amount based on probable net future earnings, discounted to present worth; in computing such amount the gross amount of future earnings is to be reduced by probable income taxes, both state and federal, and the amount deceased would have required to maintain himself and contribute to those entitled to recover under the Wrongful Death Act, with such resulting sum to be discounted by a reasonable percentage to reflect the rate of return had it been invested. D.C. Code § 12-101. *Runyon v. District of Columbia*, 463 F.2d 1319, 1972 U.S. App. LEXIS 8365 (C.A.D.C. 1972).

Under District of Columbia's Survival Act, it was fair and reasonable for United States to compensate estate of patient at Army hospital, who had been treated for Achilles tendon rupture and died as a result of deep venous thrombosis (DVT), an amount of \$200,000; patient suffered two episodes of significant and frightening chest pain and shortness of breath prior to his death, and on day of his death suffered tremendous pain when his blood stopped circulating and arteries in his lungs clogged with coagulation. *Burton v. United States*, 668 F.Supp.2d 86, 2009 U.S. Dist. LEXIS 104029 (2009).

Extraordinary child-rearing expenses are not recoverable under District of Columbia's wrongful death and survival statutes. *Dyson v. Winfield*, 129 F.Supp.2d 22, 2001 U.S. Dist. LEXIS 643 (2001).

Claims for emotional distress sustained by child's survivors, and those extraordinary child rearing expenses caused by the child's chronic birth defects which eventually led to his death were not recoverable under the District of Columbia's wrongful death and survival statutes. *Dyson v. Winfield*, 113 F.Supp.2d 44, 2000 U.S. Dist. LEXIS 14358 (2000).

In action by survivors of boiler repairman against Air Force for fatal burns sustained by repairman when he was trapped in boiler room at Air Force base after boiler explosion, evidence established that damages under District of Columbia Survival Statute, including pain and suffering, amounted to \$164,789.31. D.C. Code § 12-101. *Graves v. United States*, 517 F. Supp. 95, 1981 U.S. Dist. LEXIS 9681 (1981).

Plaintiff may recover for decedent's pain and suffering under District of Columbia Survival Statute. D.C. Code § 12-101. *Graves v. United States*, 517 F. Supp. 95, 1981 U.S. Dist. LEXIS 9681 (1981).

Recovery under District of Columbia Survival Statute is comprised of that which deceased would have been able to recover had he lived. D.C. Code § 12-101. *Graves v. United States*, 517 F. Supp. 95, 1981 U.S. Dist. LEXIS 9681 (1981).

In action under federal and District of Columbia statutes governing survival of actions and allowing wrongful death actions brought by survivors and personal representatives of former Chilean ambassador and his passenger against the Republic of Chile and various Chilean employees in which plaintiffs established defendants' liability for victims' bombing deaths which occurred as they drove to work together, plaintiffs were entitled to compensation for victims' pain and suffering, an award of punitive damages, and damages for wrongful death. D.C. Code §§ 12-101, 16-2701; 18 U.S.C. § 1606. *Letelier v. Republic of Chile*, 502 F. Supp. 259, 1980 U.S. Dist. LEXIS 14629 (1980).

In action under federal and District of Columbia statutes governing survival of actions and allowing wrongful death actions brought by survivors and personal representatives of former Chilean ambassador and his passenger against the Republic of Chile and various Chilean employees in which plaintiffs established defendants' liability for victims' bombing deaths occurring as they drove to work together, widower of passenger, who was also a passenger in the car and witnessed the explosion, established right to award for pain and suffering, but did not establish right to psychiatric therapy expenses incurred as a proximate result of defendants' acts. D.C. Code §§ 12-101, 16-2701; 18 U.S.C. § 1606. *Letelier v. Republic of Chile*, 502 F. Supp. 259, 1980 U.S. Dist. LEXIS 14629 (1980).

Jury verdict of \$1,030,002 under Survival Act in suit arising from death of detainee in District

of Columbia jail was excessive, even though there was evidence that detainee had been victim of gang rape by fellow detainees and had been repeatedly sprayed in his face with chemical compounds used to clean showers, in light of closing argument by counsel for detainee's estate emphasizing only pain and suffering detainee sustained afterwards while locked in cell and suffering from asthmatic bronchospasm. *Finkelstein v. District of Columbia*, 593 A.2d 591, 1991 D.C. App. LEXIS 159 (1991).

Under survival statute providing for action to be brought by legal representative of deceased, damages are limited to compensation to estate itself for loss of prospective economic benefit in form of decedent's prospective net lifetime earnings, discounted to present worth. D.C. Code § 12-101. *Hughes v. Pender*, 391 A.2d 259, 1978 D.C. App. LEXIS 561 (1978).

In determining award under survival statute upon death of person who has not yet made his choice of livelihood, future lost earnings must be determined on basis of potential rather than demonstrated earning capacity and that potential must be extrapolated from individual characteristics, such as age, sex, socioeconomic status, educational attainment, intelligence and dexterity. D.C. Code § 12-101. *Hughes v. Pender*, 391 A.2d 259, 1978 D.C. App. LEXIS 561 (1978).

In action under survival statute to recover for death of 16-year-old boy, who had not yet chosen a profession, award of \$5,200 was, although insubstantial, not grossly inadequate. D.C. Code § 12-101. *Hughes v. Pender*, 391 A.2d 259, 1978 D.C. App. LEXIS 561 (1978).

Survival statute does not purport to compensate individual members of decedent's family for loss of economic benefit which they might reasonably have expected to receive from decedent in form of support, services or contributions during remainder of his lifetime, nor does it seek to compensate family members for lost incidents of family association or the grief they have suffered. D.C. Code § 12-101. *Hughes v. Pender*, 391 A.2d 259, 1978 D.C. App. LEXIS 561 (1978).

Under statute providing that on death of person for or against whom right of action accrued prior to death, right of action shall survive, provided that in tort actions, right of action shall be limited to damages for physical injury except for pain and suffering, fact of injury alone is not sufficient basis for recovery, and award of damages must be based on results of injury rather than on mere fact of injury. D.C. Code 1967, § 12-101. *Bogen v. Green*, 239 A.2d 154, 1968 D.C. App. LEXIS 133 (App. 1968).

Plaintiff executrix was not entitled to ask punitive or exemplary damages for injuries suffered by decedent who fell upon seat of taxicab under Survival of Rights of Actions Act

where there was no showing that actions of company's driver were wilful, wanton or malicious. D.C. Code 1961, § 12-101. *Sullivan v. Yellow Cab Co.*, 212 A.2d 616, 1965 D.C. App. LEXIS 233 (App. 1965).

Plaintiff cannot recover damages under the Survival Act representing amounts that decedent would have contributed, had he survived the defendants' alleged negligence, to the support of his spouse and next-of-kin during the remaining years of his normal life expectancy, and which would not have been accumulated in his eventual estate for the benefit of his heirs. *Bonan v. Washington Hosp. Ctr.*, 119 WLR 1685 (Super. Ct. 1991).

Hedonic damages, damages for the loss of life's pleasures, are not recoverable under District of Columbia tort law. *Richardson v. District of Columbia*, 116 WLR 2609 (Super. Ct. 1988).

Death of fetus.

Mother of nonviable fetus, which died shortly after emerging prematurely, could not pursue action under survival statute. D.C. Code 1981, § 12-101. *Ferguson v. District of Columbia*, 629 A.2d 15, 1993 D.C. App. LEXIS 178 (1993).

Where mother's pregnancy had not progressed beyond 20 and one-half weeks, fetus was not viable for purposes of survival statute. D.C. Code 1981, § 12-101. *Ferguson v. District of Columbia*, 629 A.2d 15, 1993 D.C. App. LEXIS 178 (1993).

A cause of action exists under both the survival and wrongful death statutes for the death of a viable fetus and under the survival statute, recovery may include lost future earnings. *Williams v. Crooks*, 111 WLR 773 (Super. Ct. 1983).

Viable fetus negligently injured en ventre sa mere is a "person" within meaning of wrongful death and survival statutes and, hence, fatal prenatal injury to otherwise viable fetus is actionable under those statutes. D.C. Code 1981, §§ 12-101, 16-2701. *Greater Southeast Community Hospital v. Williams*, 482 A.2d 394, 1984 D.C. App. LEXIS 495 (1984).

In general.

Under law of District of Columbia, a "survival action" is a negligence action pursued by estate of decedent victim and all that need be proven are ordinary elements of negligence, but a "wrongful death action" is an action pursued by a survivor in his capacity as a victim himself, requiring proof of both the underlying negligence action as well as injury to the survivor. *Burton v. United States*, 668 F.Supp.2d 86, 2009 U.S. Dist. LEXIS 104029 (2009).

District of Columbia statute allowing a person representing a decedent's estate to assert tort claims belonging to the deceased victim that would have been precluded at common law does not create a distinct, substantive cause of

action. *Powers-Bunce v. District of Columbia*, 479 F.Supp.2d 146, 2007 U.S. Dist. LEXIS 21778 (2007).

Under District of Columbia law, survival statute is the exclusive means by which an estate may recover for common law torts resulting in the decedent's death. *Henson v. W.H.H Trice & Co.*, 466 F.Supp.2d 187, 2006 U.S. Dist. LEXIS 91995 (2006).

District of Columbia Survival Statute creates no new right of action but, rather, merely allows surviving representative to stand in shoes of deceased and to sue as deceased would have had right to sue had he lived. D.C. Code 1981, § 12-101. *Perry v. Criss Bros. Iron Works, Inc.*, 741 F. Supp. 985, 1990 U.S. Dist. LEXIS 10601 (1990).

Survival Act permits injured person's claim to be enforced after his death by his legal representative. D.C. Code § 12-101. *Wharton v. Jones*, 285 F. Supp. 634, 1968 U.S. Dist. LEXIS 9207 (D.D.C.1968).

If tort results in death, 2 causes of action arise, 1 under this section, and the other under § 16-2701. *Graves v. United States*, 517 F. Supp. 95 (D.D.C.1981); *Richardson v. District of Columbia*, 116 WLR 2609 (Super. Ct. 1988).

Instructions.

Defendant executrix, who was substituted as defendant in personal injury action following death of tort-feasor, was entitled, having made point in proper and timely fashion, to rulings and instructions defining proper elements of recovery under statute providing that on death of person for or against whom right of action accrued prior to death, right of action shall survive, provided that in tort actions, right of action shall be limited to damages for physical injury except for pain and suffering, and failure to make rulings requested required new trial. D.C. Code 1967, § 12-101. *Bogen v. Green*, 239 A.2d 154, 1968 D.C. App. LEXIS 133 (App. 1968).

Jurisdiction.

District of Columbia district court did not have personal jurisdiction over defendants in survival action arising out of automobile accident that occurred in Maryland, insofar as any financial losses in District of Columbia merely represented measure of damages for tortious injury in Maryland. D.C. Code 1981, § 12-101. *Perry v. Criss Bros. Iron Works, Inc.*, 741 F. Supp. 985, 1990 U.S. Dist. LEXIS 10601 (1990).

Law governing.

Under District of Columbia choice of law principles, the law of District of Columbia, rather than Israeli law, governed intentional infliction of emotional distress and survival claims brought against the Islamic Republic of Iran and the Iranian Ministry of Information and Security arising from death of U.S. citizen,

who was abducted and executed by members of terrorist group while residing in Israel; although all the plaintiffs resided in Israel at the time of the abduction and execution, the United States' interest in guaranteeing redress to U.S. citizens was paramount. *Wachsman ex rel. Wachsman v. Islamic Republic of Iran*, 537 F.Supp.2d 85, 2008 U.S. Dist. LEXIS 14547 (2008).

Limitations.

— In general.

Under District of Columbia law, if decedent would have had cause of action at time of his death, then survivor has one year from date of death in which to file wrongful death action, even though statute of limitations for underlying claim, and hence any survival action, may have run before one-year wrongful death limitations period expires. D.C. Code 1981, §§ 16-2701, 16-2702. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193, 1994 U.S. App. LEXIS 16163 (C.A.D.C. 1994).

Because Survival Act by its terms concerns itself with right of action which accrued prior to decedent's death, it does not create new right of action, and applicable period of limitations under Survival Act is accordingly period that governs underlying claim. D.C. Code 1981, § 12-101. *Arrington v. District of Columbia*, 673 A.2d 674, 1996 D.C. App. LEXIS 61 (1996).

Where Survival Act claim alleging that patient died as a result of injuries allegedly caused by negligent acts and omissions of members of hospital staff was filed within three years after the decedent would have had a claim if he had lived, claim was timely. D.C. Code § 12-301(8). *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

As the Survival Act does not contain a time limitation, the three-year statute of limitations, generally applicable to tort claims, applies. D.C. Code §§ 12-101, 12-301(8). *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

Where hospital was put on notice that it would have to defend a claim arising out of death of plaintiff's father by original complaint wherein deceased's son, individually and on behalf of deceased's estate, sought recovery under the Survival Act and the Wrongful Death Act, subsequent amendment wherein son brought suit in his capacity as administrator of estate would be allowed to relate back to time of filing of original complaint, and, thus, suit was not barred by statute of limitations. D.C. Code §§ 12-101, 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

— Tolling, limitations.

Statute of limitations on filing wrongful death and survival action was tolled by unpriv-

ileged failure of physician and hospital to permit decedent's son to inspect decedent's medical records. D.C. Code §§ 12-101 to 12-104, 16-2701 to 16-2703. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Personal representative of shooting victim was collaterally estopped, under District of Columbia law, from arguing that Chinese gun manufacturer was equitably estopped from asserting statute of limitations defense in wrongful death action and from challenging dismissal without prejudice of representative's prior claim; representative's argument, that his failure to effect service on manufacturer should have been excused as manufacturer's fault, was fully and fairly litigated in earlier action. *Melara v. China North Industries, Corp.*, 658 F.Supp.2d 178, 2009 U.S. Dist. LEXIS 90137 (2009).

Personal representative of shooting victim was barred, under District of Columbia law, from asserting equitable tolling of one-year statute of limitations for his wrongful death claim and three-year statute of limitations for other torts in his capacity as personal representative, in action against gun manufacturer, where assertion of equitable tolling was based on allegedly timely filing of claims that were later dismissed without prejudice. *Melara v. China North Industries, Corp.*, 658 F.Supp.2d 178, 2009 U.S. Dist. LEXIS 90137 (2009).

Pendency of wrongful death action did not toll statute of limitations on claim under Survival Act. D.C. Code §§ 12-101, 12-301, 16-2701 et seq. *Wharton v. Jones*, 285 F. Supp. 634, 1968 U.S. Dist. LEXIS 9207 (D.D.C.1968).

Administratrix' wrongful death and survival actions were barred by statute of limitations where the claims on behalf of decedent's estate were not filed until over three years after date of automobile accident which resulted in decedent's death despite contention that defendants concealed their identities, and even though defendants failed to file an accident report in violation of statute, in that defendants' concealment of their identities did not toll running of the limitation periods, and in any event defendant knew identity of owner of the vehicle and thus could have filed a timely claim. D.C. Code 1973, §§ 12-101, 12-301(8), 16-2702, 40-426. *Estate of Chappelle v. Sanders*, 442 A.2d 157, 1982 D.C. App. LEXIS 298 (1982).

Persons entitled to sue.

District court would award estate of individual, who, while residing in Israel, was abducted and executed by an Islamic militant terrorist organization, \$2 million under the District of Columbia Survivor Act for pain and suffering he endured before his death, in its action against Islamic Republic of Iran and the Iranian Ministry of Information and Security,

where decedent suffered mental and physical harm for six days as a hostage and surely knew moments before his death that he was going to be executed. *Wachsmann ex rel. Wachsmann v. Islamic Republic of Iran*, 603 F.Supp.2d 148, 2009 U.S. Dist. LEXIS 25951 (2009).

Additional recovery under the District of Columbia Survivor Act is available for the decedent's pain and suffering; the amount recoverable depends on the circumstances of the case, but the award typically increases the longer a victim experiences pain and suffering before death. *Wachsmann ex rel. Wachsmann v. Islamic Republic of Iran*, 603 F.Supp.2d 148, 2009 U.S. Dist. LEXIS 25951 (2009).

Individual, who, while residing in Israel, was abducted and executed by an Islamic militant terrorist organization, could have sued Islamic Republic of Iran and the Iranian Ministry of Information and Security, prior to his death, for their material support of the terrorist organization for intentional infliction of emotional distress (IIED), so as to permit his estate to pursue his IIED claim under the District of Columbia Survival Act. *Wachsmann ex rel. Wachsmann v. Islamic Republic of Iran*, 603 F.Supp.2d 148, 2009 U.S. Dist. LEXIS 25951 (2009).

Parents of decedent, who was killed when an airplane struck his automobile, could not maintain action against airline under District of Columbia's Survival and Wrongful Death Act statutes, since neither parent qualified as decedent's personal representative and were not decedent's heirs under law of District of Columbia or California; furthermore, since parents' claimed only damages suffered by them rather than losses of decedent, they did not allege damages which were proper subject of survival action. D.C. Code 1981, §§ 12-101, 16-2701. *Saunders v. Air Florida, Inc.*, 558 F. Supp. 1233, 1983 U.S. Dist. LEXIS 18647 (1983).

Under District of Columbia law, heirs or next of kin are entitled to recognition as legal representatives in survival action on behalf of decedent's estate, and where there are heirs or next of kin who are themselves minors, guardian ad litem is appropriate instrumentality to protect their interests pending administration of decedents' estates. Fed.Rules Civ.Proc. rule 17(c), 18 U.S.C.; D.C. Code § 12-101. In re Air Crash Disaster near Saigon, 476 F. Supp. 521, 1979 U.S. Dist. LEXIS 13080 (1975).

Claim under District of Columbia Survival Act must be brought by the legal representative of the decedent's estate, and all proceeds recovered by the representative pass to the decedent's estate. *Schoenborn v. Wash. Metro. Area Transit Auth.*, 247 F.R.D. 5, 2007 U.S. Dist. LEXIS 86225 (2007).

Daughter did not have legally cognizable interest in deceased mother's probable net future earnings as compensation to mother's es-

tate by any recovery under District of Columbia Survival Act, which was subject of personal representative's survival action, as required for daughter's intervention as of right, since any proceeds recovered by representative would pass to estate, rather than compensating daughter beneficiary for loss of economic benefit she could reasonably have expected to receive from decedent during remainder of decedent's life or for lost incidents of family association or grief suffered. *Schoenborn v. Wash. Metro. Area Transit Auth.*, 247 F.R.D. 5, 2007 U.S. Dist. LEXIS 86225 (2007).

Action under Survival Act must be brought by legal representative of decedent's estate, and all proceeds recovered by representative pass to decedent's estate. D.C. Code 1981, § 12-101 et seq. *Lewis v. Lewis*, 708 A.2d 249, 1998 D.C. App. LEXIS 44 (1998).

A "legal representative" under the Survival Act may be any person who, whether by virtue of testamentary act or operation of law, stands in the place of the decedent with respect to his property, and Congress did not intend to restrict the right to bring survival action to duly appointed personal representatives, i.e., executors or administrators. D.C. Code § 12-101. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

Concept embraced by the term "legal representative" as used in the Survival Act is not without limit; for example, nonheirs, who are beneficiaries under a will are not "legal representatives" for the purposes of the survival statute until probate is had and their rights have been ripened. D.C. Code § 12-101. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

As heir-at-law, deceased's son was a proper party to sue on the Survival Act claim at the time of the filing of the original complaint, although he had not then been qualified as administrator of his father's estate. D.C. Code § 12-101. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

Pleadings.

Complaint which alleged death of parent-administrator's minor child due to negligent operation of automobiles, that child was in good health and in possession of all her faculties, and that parents were entitled to services and support of child and to funeral expenses incurred and had been damaged by her death in sum of \$20,000 failed to allege a claim under the Survival Act. D.C. Code § 12-101. *Wharton v. Jones*, 285 F. Supp. 634, 1968 U.S. Dist. LEXIS 9207 (D.D.C.1968).

Deceased's son who filed complaint, individually and on behalf of deceased's estate, which asserted, among other things, that it was being brought under the Survival Act did, when read as a whole, state a claim under the Survival

Act. D.C. Code § 12-101. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

Practice and procedure, generally.

Where 84-year-old widow invoked the District of Columbia Public Assistance Act of 1962 against her eldest daughter, and the District of Columbia Court of General Sessions denied recovery, and, pending appeal to District of Columbia Court of Appeals, widow died, and her daughter moved for dismissal for mootness against substituted executor, District of Columbia Survival Act did not require abatement, and it was error to grant motion for dismissal for mootness. D.C. Code §§ 3-201 to 3-223, 3-201, 3-218, 12-101. *Stone v. Brewster*, 399 F.2d 554, 1968 U.S. App. LEXIS 7838 (C.A.D.C. 1968).

On issue of pain and suffering as element of damages under survival statute, directed verdict is only proper where evidence is so clear that reasonable men could reach but one conclusion. D.C. Code 1981, § 12-101. *Doe v. Binker*, 492 A.2d 857, 1985 D.C. App. LEXIS 325 (1985).

In action under wrongful death and survival statutes, seeking damages for death of truck driver in automobile collision, evidence that unknown owner of another truck left his vehicle standing in lane of traffic in middle of bridge without its lights on or its warning devices flashing during poor weather conditions at night was sufficient to support finding that unknown owner was negligent and that decedent did everything reasonably possible to avoid the accident and thus was not contributorily negligent. D.C. Code 1981, §§ 12-101, 16-2701. *Doe v. Binker*, 492 A.2d 857, 1985 D.C. App. LEXIS 325 (1985).

In action brought by administratrix of decedent's estate and by decedent's widow against decedent's employer under Wrongful Death Act and Survival Act, conclusory allegations and innuendo to effect that corporate officials of employer conspired in the killing of decedent by a fellow employee were insufficient to preclude summary judgment for employer under exclusive liability provision of the Longshoremen's and Harbor Workers' Compensation Act, absent any supporting depositions, affidavits or other documents. D.C. Code 1981, §§ 12-101, 16-2701, 36-301 et seq.; Longshoremen's and Harbor Workers' Compensation Act, §§ 1-51, as amended, 33 U.S.C. §§ 901-950. *Rustin v. District of Columbia*, 491 A.2d 496, 1985 D.C. App. LEXIS 352 (1985), writ of certiorari denied by 474 U.S. 946, 106 S. Ct. 343, 88 L. Ed. 2d 290, 1985 U.S. LEXIS 4230, 54 U.S.L.W. 3309 (1985).

Purpose.

The District of Columbia Survival Act was enacted for purpose of abrogating, in part at

least, the harsh rule of the common law on the subject of survival, but its terms apply to any case in which a right of action has accrued prior to death, with certain limitation in tort cases. D.C. Code § 12-101. *Stone v. Brewster*, 399 F.2d 554, 1968 U.S. App. LEXIS 7838 (C.A.D.C. 1968).

Survival Act preserves for benefit of decedent's estate right of action decedent had before death; its purpose is to place decedent's estate in same position it would have occupied if decedent's life had not been terminated prematurely. D.C. Code 1981, § 12-101 et seq. *Lewis v. Lewis*, 708 A.2d 249, 1998 D.C. App. LEXIS 44 (1998).

The intention of this act is to place the decedent's estate in the same position it would have enjoyed had the decedent's life not been prematurely terminated, and proper recovery under this act is based on probable net future earnings reduced by the amount the deceased would have used to maintain himself and those entitled to recover under the Wrongful Death Act. *Bonan v. Washington Hosp. Ctr.*, 119 WLR 1685 (Super. Ct. 1991).

This section is designed to place the deceased's estate in the position it would have been in had the deceased's life not been cut short. *Semler v. Psychiatric Inst. of Washington, D.C., Inc.*, 575 F.2d 922, 116 WLR 2609 (D.C.Cir. 1978).

Questions for jury.

Issue of damages in wrongful death or survival action, as in other actions, is particularly within province of jury. *Doe v. Binker*, 492 A.2d 857, 1985 D.C. App. LEXIS 325 (1985).

Where there is conflicting evidence on issue of pain and suffering under survival statute, that conflict must be resolved by the jury; however, jury may not be left merely to speculate about the evidence. D.C. Code 1981, § 12-101. *Doe v. Binker*, 492 A.2d 857, 1985 D.C. App. LEXIS 325 (1985).

As in other areas, circumstantial evidence on issue of pain and suffering as element of damages under survival statute may be sufficient to establish case for jury. D.C. Code 1981, § 12-101. *Doe v. Binker*, 492 A.2d 857, 1985 D.C. App. LEXIS 325 (1985).

In action under survival statute, substantial circumstantial evidence was presented on issue of pain and suffering from which jury could draw reasonable inferences, and thus trial court did not err in denying motion for directed verdict on that issue. D.C. Code 1981, § 12-101. *Doe v. Binker*, 492 A.2d 857, 1985 D.C. App. LEXIS 325 (1985).

Whether decedent's death resulted from negligence by police detective in using excessive force under the circumstances was question for jury in suit brought by decedent's wife and two minor children against the District of Columbia

under the Wrongful Death Act and survival statute. D.C. Code 1973, §§ 11-921, 12-101, 16-2701. *District of Columbia v. White*, 442 A.2d 159, 1982 D.C. App. LEXIS 299 (1982).

In absence of expert testimony on training of police detective, trial court, in suit by widow and children of individual killed by police detective against the District of Columbia under the Wrongful Death Act and survival statute, improperly submitted negligent training issue to jury, and such error was prejudicially erroneous, because it undermined the validity of the jury finding of negligence. *District of Columbia v. White*, 442 A.2d 159, 1982 D.C. App. LEXIS 299 (1982).

Res judicata.

Where plaintiff initially had option of suing for wrongful death of decedent, a Virginia resident, in Virginia or in District of Columbia which was the residence of defendants, plaintiff by initially suing for wrongful death in federal court in Virginia and recovering judgment was barred under doctrine of res judicata from subsequently suing for same wrongful death in federal court in District of Columbia, notwithstanding claim that District of Columbia action was based on its Survival Act, while the Virginia action was based on its Wrongful Death Act. Code Va.1950, § 8-633 et seq.; D.C. Code §§ 12-101 et seq., 16-2701 et seq.; U.S. Const. art. 4, § 1. *Semler v. Psychiatric Institute of Washington, D. C., Inc.*, 575 F.2d 922, 1978 U.S. App. LEXIS 11991 (C.A.D.C. 1978).

Summary judgment.

A genuine issue of material fact existed as to whether patient actually had, or should have recognized, some evidence of wrongdoing by hospital or physician in the days prior to his death, precluding summary judgment in favor of hospital on limitations grounds in medical malpractice action filed by patient's personal representative. *Santos v. George Washington Univ. Hosp.*, 980 A.2d 1070, 2009 D.C. App. LEXIS 375 (2009).

Validity.

District of Columbia law of survival of actions was enacted by Congress pursuant to its constitutional power and responsibility to exercise exclusive legislation in all cases whatsoever over seat of government of the United States, and survival statute represents congressionally determined policy governing survival of actions. U.S. Const. art. 1, § 8, cl. 17; D.C. Code § 12-101. In re *Air Crash Disaster near Saigon*, 476 F. Supp. 521, 1979 U.S. Dist. LEXIS 13080 (1975).

Wrongful Death Act distinguished.

District of Columbia Survival Act compensates estate for injuries caused to decedent while Wrongful Death Act gives right of action

to survivor who suffers loss as result of death of decedent, but plaintiff needs viable cause of action at time of decedent's death under both statutes. D.C. Code 1981, §§ 12-101, 16-2701. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193, 1994 U.S. App. LEXIS 16163 (C.A.D.C. 1994).

Under District of Columbia law, negligent conduct resulting in death gives rise to two independent rights of action under the Wrongful Death Act and under the Survival Act, upon each of which damages may be sought. D.C. Code §§ 12-101 et seq., 16-2701 et seq. *Semler v. Psychiatric Institute of Washington, D. C., Inc.*, 575 F.2d 922, 1978 U.S. App. LEXIS 11991 (C.A.D.C. 1978).

Where husband and father's death was result of defendants' negligence, recovery could be had under both the Survival Statute and the Wrongful Death Act; however, double recovery for the same elements of damage was to be avoided. D.C. Code §§ 12-101, 16-2701, 16-2702. *Runyon v. District of Columbia*, 463 F.2d 1319, 1972 U.S. App. LEXIS 8365 (C.A.D.C. 1972).

Negligent conduct resulting in death may generate simultaneously two independent bases for action, one under the Survival Act and the other under the Wrongful Death Act, upon each of which damages may be sought. D.C. Code §§ 12-101 to 12-104, 16-2701 to 16-2703. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Negligent act causing death can give rise simultaneously to separate and independent claims under Wrongful Death Act and under

Survival Act. D.C. Code §§ 12-101, 16-2701 et seq. *Wharton v. Jones*, 285 F. Supp. 634, 1968 U.S. Dist. LEXIS 9207 (D.D.C.1968).

A plaintiff is entitled to simultaneously maintain two separate causes of action upon death of tort victim, one under the Wrongful Death Act and the other under the Survival Act. D.C. Code §§ 12-101, 16-2701. *Waldon v. Covington*, 415 A.2d 1070, 1980 D.C. App. LEXIS 303 (1980).

Remedies provided by Survival Act and the Wrongful Death Act are not mutually exclusive and may be pursued simultaneously. D.C. Code §§ 12-101, 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

Negligent conduct resulting in death may give rise to two independent claims: one under the Survival Act, which allows recovery of damages, excluding pain and suffering, arising from personal injury to the decedent, and another under the Wrongful Death Act which allows recovery for pecuniary loss to the decedent's next of kin, i.e., loss of support occasioned by the death. D.C. Code §§ 12-101, 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

The Survival Act permits a claim which accrued to a decedent before his death to be enforced after his death by his "legal representative"; on the other hand, the Wrongful Death Act creates a new cause of action which arises on the death of the decedent and is enforced by his "personal representative." D.C. Code §§ 12-101, 16-2701 to 16-2703. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

§ 12-102. Substitution of parties.

The substitution of parties in civil actions in the United States District Court for the District of Columbia and the Superior Court of the District of Columbia is governed by the Federal Rules of Civil Procedure.

(Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 551, Pub. L. 91-358, title I, § 141(1).)

Prior Codifications. — 1981 Ed., § 12-102. 1973 Ed., § 12-102.

CASE NOTES

In general.

Procedural rule governing substitution of parties upon death of party requires that, in order to substitute party defendant, plaintiff must properly serve motion for substitution under one of procedures prescribed by rule

governing service of process, but does not incorporate substantive requirement that summons and complaint also must be served upon substituted defendant. Civil Rules 4, 4(c), 25, 25(a)(1). *Epps v. Vogel*, 454 A.2d 320, 1982 D.C. App. LEXIS 506 (1982).

§ 12-103. Judgment and costs in case of new party.

In all cases where a new party is made to an action, the costs which accrued before the new party was made to the action shall be taxed as part of the costs in the action, and the judgment rendered shall be the same as if the action had been originally commenced between persons who are parties to the action. A defendant who is made a new party to the action may not be burdened with debts, damages, or costs beyond the amount of property or assets that have descended or come to his hands from the deceased.

(Dec. 23, 1963, 77 Stat. 509, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 12-103. 1973 Ed., § 12-103.

§ 12-104. Marriage of party.

An action does not abate by the marriage of a party. On application of a party the court may, on such terms and notice as it deems proper, allow and order any amendment in the pleadings and the making of any new or additional parties that the marriage may render necessary or proper.

(Dec. 23, 1963, 77 Stat. 510, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 12-104. 1973 Ed., § 12-104.

CHAPTER 3. LIMITATION OF ACTIONS.

Sec.	Sec.
12-301. Limitation of time for bringing actions.	12-309. Actions against District of Columbia for unliquidated damages; time for notice.
12-302. Disability of plaintiff.	
12-303. Absence or concealment of defendant.	12-310. Actions arising out of death or injury caused by defective or unsafe improvements to real property.
12-304. Actions stayed by court or statute.	12-311. Actions arising out of death or injury caused by exposure to asbestos.
12-305. Actions against decedents' estates.	
12-306. [Repealed].	
12-307. Foreign judgments.	
12-308. Actions by the United States.	

§ 12-301. Limitation of time for bringing actions.

Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

- (1) for the recovery of lands, tenements, or hereditaments— 15 years;
- (2) for the recovery of personal property or damages for its unlawful detention— 3 years;
- (3) for the recovery of damages for an injury to real or personal property— 3 years;
- (4) for libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or false imprisonment— 1 year;
- (5) for a statutory penalty or forfeiture— 1 year;
- (6) on an executor's or administrator's bond— 5 years; on any other bond or single bill, covenant, or other instrument under seal— 12 years;
- (7) on a simple contract, express or implied— 3 years;
- (8) for which a limitation is not otherwise specially prescribed— 3 years;
- (9) for a violation of § 7-1201.01(11)— 1 year;
- (10) for the recovery of damages for an injury to real property from toxic substances including products containing asbestos— 5 years from the date the injury is discovered or with reasonable diligence should have been discovered;
- (11) for the recovery of damages arising out of sexual abuse that occurred while the victim was a minor— 7 years from the date that the victim attains the age of 18, or 3 years from when the victim knew, or reasonably should have known, of any act constituting abuse, whichever is later.

This section does not apply to actions for breach or contracts for sale governed by § 28:2-725, nor to actions brought by the District of Columbia government.

(Dec. 23, 1963, 77 Stat. 510, Pub. L. 88-241, § 1; Aug. 30, 1964, 78 Stat. 677, Pub. L. 88-509, § 2; Mar. 3, 1979, D.C. Law 2-136, § 805(c), 25 DCR 5055; Feb. 28, 1987, D.C. Law 6-202, § 3, 34 DCR 527; Apr. 30, 1988, D.C. Law 7-104, § 2(a), 35 DCR 147; Mar. 13, 2004, D.C. Law 15-105, § 99, 51 DCR 881; Mar. 25, 2009, D.C. Law 17-368, § 2, 56 DCR 1338.)

Cross references. — Adverse possession, limitation of actions, see § 16-3301.

Breach of contract for sale, commencement of action after breach, see § 28:2-725.

Common carrier, commencement of action against for injury or death of employee, see § 35-304.

Consumer protection procedures, limitation

of actions, see § 28-3905.

Hospital lien, limitation of enforcement, see § 40-303.

Income tax, limitation upon assessment and collection, see § 47-1812.10.

Mechanics lien, limitation of enforcement action, see § 40-303.13.

Quo warranto, commencement of action for usurpation of office, see § 16-3548.

Return of property by Property Clerk, see § 5-119.06.

Subways and viaducts, absence of limitation on action to recover part of costs, see § 9-1201.15.

Unpaid wages or liquidated damages, limitation of actions, see § 32-1013.

Usury, commencement of action, see § 28-3304.

Viaduct costs, absence of limitation on recovery action, see § 9-315.

Wrongful death actions, limitation of actions, see § 16-2702.

Section references. — This section is referred to in § 12-308.

Prior Codifications. — 1981 Ed., § 12-301. 1973 Ed., § 12-301.

Effect of amendments. — D.C. Law 15-105, in par. (9), substituted “§ 7-1201.01(11)” for “the District of Columbia Mental Health Information Act of 1978 (D.C. Official Code, sec. 7-1201.01 et seq.)”.

L.C. Law 17-368 added par. (11).

Legislative history of Law 2-136. — Law 2-136, the “District of Columbia Mental Health Information Act of 1978,” was introduced in Council and assigned Bill No. 2-144, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first, second amended first, and second readings on July 11, 1978, July 25, 1978, September 19, 1978, July 25, 1978, September 19, 1978 and October 3,

1978, respectively. Signed by the Mayor on November 1, 1978, it was assigned Act No. 2-292 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-202. — For legislative history of D.C. Law 6-202, see Historical and Statutory Notes following § 12-311.

Legislative history of Law 7-104. — Law 7-104, the “Technical Amendments Act of 1987,” was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was Adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-105. — Law 15-105, the “Technical Amendments Act of 2003,” was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Legislative history of Law 17-368. — Law 17-368, the “Intrafamily Offenses Act of 2008,” was introduced in Council and assigned Bill No. 17-55 which was referred to the Committee on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 22, 2009, it was assigned Act No. 17-703 and transmitted to both Houses of Congress for its review. D.C. Law 17-368 became effective on March 25, 2009.

CASE NOTES

ANALYSIS

Accrual of right of action or defense.

—Accounts, accrual of right of action or defense.

—Agency contracts, accrual of right of action or defense.

—Civil rights, accrual of right of actions or defense.

—Conspiracy, accrual of right of action or defense.

—Construction contracts, accrual of right of action or defense.

—Continuing injury or treatment, accrual of right of action or defense.

—Contracts in general, accrual of right of action or defense.

—Covenants and conditions, accrual of right of action or defense.

—False arrest, accrual of right of action or defense.

—Fraud, accrual of right of action or defense.

—Implied contracts, accrual of right of action or defense.

—In general.

—Injuries to person, accrual of right of action or defense.

—Injury to property, accrual of right of action or defense.

—Instruments for payment of money, accrual of right of action or defense.

—Insurance contracts, accrual of right of action or defense.

- Labor and employment claims, accrual of right of action or defense.
- Landlord and tenant, accrual of right of action or defense.
- Legal malpractice, accrual of right of action or defense.
- Libel and slander, accrual of right of action or defense.
- Malicious prosecution, accrual of right of action or defense.
- Negligence, accrual of right of action or defense.
- Penalties and forfeitures, accrual of right of action or defense.
- Reimbursement, indemnity, or contribution, accrual of right of action or defense.
- Retirement and Disability benefits, accrual of right of action or defense.
- Sales contracts, accrual of right of action or defense.
- Severable claims, accrual of right of action or defense.
- Severable contracts and installments, accrual of right of action or defense.
- Statutory liability, accrual of right of action or defense.
- Torts in general, accrual of right of action or defense.
- Wrongful seizure of property, accrual of right of action or defense.
- Acknowledgment or new promise.
- Administrative delay.
- Adverse possession.
- Agreements as to period of limitation.
- Amendment of pleadings, generally.
- Bankruptcy.
- Certification of state law question by federal court.
- Commencement of proceedings and relation back—In general.
- Amendment of pleadings, commencement of proceedings and relation back.
- Counterclaims and cross-actions, commencement of proceedings and relation back.
- Defects or irregularities, commencement of proceedings and relation back.
- Intervention or new parties, commencement of proceedings and relation back.
- New action after dismissal, commencement of proceedings and relation back.
- Concealment of cause of action.
- Conflicts of law.
- Construction and application.
- Construction with federal law.
- Declaratory judgment.
- Discovery of fraud.
- Constructive notice, discovery of fraud.
- Diligence, discovery of fraud.
- In general.
- Inquiry notice, discovery of fraud.
- Dismissal.
- District of Columbia as party.
- Easements.
- Effect of bar by limitation.
- Actions and other remedies barred, effect of bar by limitation.
- In general.
- Nature and extent of bar, effect of bar by limitation.
- Persons to whom bar available, effect of bar by limitation.
- Estoppel to rely on limitation.
- Federal court application of state law.
- Ignorance of cause of action.
- Civil rights, ignorance of cause of action.
- Contracts or warranties, ignorance of cause of action.
- Diseases or drug-related injuries, ignorance of cause of action.
- Health care malpractice, ignorance of cause of action.
- In general.
- Injuries to person, ignorance of cause of action.
- Injuries to property, ignorance of cause of action.
- Labor and employment claims, ignorance of cause of action.
- Lack of diligence, ignorance of cause of action.
- Legal malpractice, ignorance of cause of action.
- Libel and slander, ignorance of cause of action.
- Nature of harm or damage, ignorance of cause of action.
- Professional malpractice in general, ignorance of cause of action.
- Securities or corporations, ignorance of cause of action.
- Title or property interest, ignorance of cause of action.
- Laches.
- Limitation applicable to action.
- Actions not specially prescribed, limitation applicable to action.
- Assault, battery, mayhem or wounding, limitation applicable to action.
- Breach of fiduciary duty, limitation applicable to action.
- Civil rights, limitation applicable to action.
- Construction with other laws, limitation applicable to action.
- Contracts in general, limitation applicable to action.
- Covenant or instrument under seal, limitation applicable to action.
- Equitable claims, limitation applicable to action.
- False arrest or imprisonment, limitation applicable to action.
- Fraud, limitation applicable to action.
- Health care malpractice, limitation applicable to action.
- In general.

- Injuries to person, limitation applicable to action.
- Injuries to property, limitation applicable to action.
- Intentional infliction of emotional distress, limitation applicable to action.
- Labor and employment claims, limitation applicable to action.
- Landlord and tenant, limitation applicable to action.
- Legal malpractice, limitation applicable to action.
- Libel and slander, limitation applicable to action.
- Penalties and forfeitures, limitation applicable to action.
- Recovery of real property, limitation applicable to action.
- Securities or corporations, limitation applicable to action.
- Mistake as ground for relief.
- Part payment.
- Pendency of proceedings and equitable tolling.
- Performance of condition, demand or notice.
- Pleadings.
- Presumptions and burden of proof.
- Purpose.
- Questions for jury.
- Review.
- Summary judgment.
- Tolling.
- Trust relationship.
- United States government or official as party.
- Waiver of limitation.
- Weight and sufficiency of evidence.

Accrual of right of action or defense.

— Accounts, accrual of right of action or defense.

Statute of limitations does not begin to run against claim of committee for advances of sums to incompetent's estate for its benefit until committee enters final account with court, demands reimbursement for properly recorded advances, or dies with account open and unsettled. D.C. Code 1961, § 12-201. *Clarke v. Hickman*, 307 F.2d 660, 1962 U.S. App. LEXIS 4812 (C.A.D.C. 1962).

An "account stated" is a promise by a debtor to pay a stated sum of money which the parties had agreed upon as the amount due; the doctrine of account stated presupposes an absolute acknowledgment or admission of a certain sum due, or an adjustment of accounts between the parties, the striking of a balance, and an assent, express or implied, to the correctness of the balance. *Eagle Maint. Servs. v. D.C. Contract Appeals Bd.*, 893 A.2d 569, 2006 D.C. App. LEXIS 88 (2006).

Special master's cause of action on first personal representative's surety bond accrued, and five-year statute of limitations began to run,

when court approved final accounting of estate. *In re Estate of Green*, 816 A.2d 14, 2003 D.C. App. LEXIS 20 (2003), remanded by 896 A.2d 250, 2006 D.C. App. LEXIS 152 (D.C. 2006).

Where buyer and seller of restaurant equipment agreed that submission of bill was to be deferred until buyer received all items and buyer did not see seller's record or account sheet until months after it was made and then disputed correctness of sheet, the sheet was not an "account stated" within rule that statute of limitations begins to run on account stated from time it is stated, and the statute did not begin to run until date of last delivery. *Dawn v. Stern Equipment Co.*, 134 A.2d 341, 1957 D.C. App. LEXIS 269 (Cr.App. 1957).

— Agency contracts, accrual of right of action or defense.

Under District of Columbia law, a statute of limitations may be equitably tolled when the party claiming the protection of the statute of limitations has employed affirmative acts to fraudulently conceal either the existence of a claim or facts forming the basis of a cause of action. *Johnson v. Long Beach Mortg. Loan Trust 2001-4*, 451 F.Supp.2d 16, 2006 U.S. Dist. LEXIS 54264 (2001).

Under District of Columbia's discovery rule, mortgagor's fraud claims against mortgage broker would not have accrued on the date of loan's settlement if mortgage broker had a fiduciary duty to mortgagor; if mortgage broker owed mortgagor a duty to represent her in her dealings with lender and investigate any potential wrongdoing, a reasonable fact-finder could decide that mortgagor did not fail to make a reasonable inquiry into the alleged wrongs herself. *Johnson v. Long Beach Mortg. Loan Trust 2001-4*, 451 F.Supp.2d 16, 2006 U.S. Dist. LEXIS 54264 (2001).

Real estate broker's cause of action for breach of contractual right to exclusive listing accrued at time when vendor accepted offer to purchase subject property through another real estate broker, rather than time sale was finally consummated, even though sales contract was subject to credit check condition and other conditions, where events referred to in conditions never occurred. *Joseph M. Silverman, Inc. v. Harrison*, 498 A.2d 193, 1985 D.C. App. LEXIS 472 (1985).

— Civil rights, accrual of right of actions or defense.

Under District of Columbia law, three-year limitations period began to run on female police officer's §§ 1981 and §§ 1983 claims against police department when department's discriminatory and retaliatory conduct occurred, even if the effects of the alleged conduct did not surface until later. *Moore v. District of Columbia*, 686 F.Supp.2d 88, 2010 U.S. Dist. LEXIS

17802 (2010), affirmed in part and reversed in part by, remanded by 445 Fed. Appx. 365, 2011 U.S. App. LEXIS 21965 (D.C. Cir. 2011).

District of Columbia's three-year statute of limitations applicable to plaintiff's §§ 1983 action arising from two separate arrests began to run no later than the date of plaintiff's second arrest. *Curtis v. Lanier*, 535 F.Supp.2d 89, 2008 U.S. Dist. LEXIS 14914 (2008).

— Conspiracy, accrual of right of action or defense.

Under District of Columbia law, three-year statute of limitations for arrestee's conspiracy claim against police and private parties arising from two separate arrests began to run no later than the date of his second arrest. *Curtis v. Lanier*, 535 F.Supp.2d 89, 2008 U.S. Dist. LEXIS 14914 (2008).

— Construction contracts, accrual of right of action or defense.

The statute of limitations began to run against cause of action for breach of building contract provision that basement should be dry and remain dry for three years when defendant contractor abandoned his efforts to make basement dry, not when basement first became wet a few months after completion of building. D.C. Code 1940, §§ 12-201 to 12-206. *Zellan v. Cole*, 183 F.2d 139, 1950 U.S. App. LEXIS 2919 (C.A.D.C. 1950).

A government contractor's suit for breach of subcontract to furnish labor and materials was barred by statute of limitations three years after such breach, though plaintiff made payments to persons from whom subcontractor obtained materials and learned exact cost of completing contract work within three years before bringing suit, as claim for breach of contract arises when contract is broken, not when resulting damage is precisely ascertained. D.C. Code 1940, § 12-201. *H. Herfurth, Jr., Inc. v. Acker*, 177 F.2d 38, 1949 U.S. App. LEXIS 3679 (C.A.D.C. 1949).

A subcontractor, failing to make due payment for materials obtained by him from others to be furnished government contractor under subcontract, thereby subjecting government contractor to materialmen's claims, broke subcontract, so as to require filing of suit by government contractor for such breach within three years thereafter, though damages caused thereby occurred within three years before suit. D.C. Code 1940, § 12-201; *Heard Act*, 40 U.S.C. § 270. *H. Herfurth, Jr., Inc. v. Acker*, 177 F.2d 38, 1949 U.S. App. LEXIS 3679 (C.A.D.C. 1949).

Contract between contractor and subcontractor to refurbish halls and corridors of hotel did not constitute series of separate contracts permitting statute of limitations to run on each separate occasion where contract was allegedly

breached; rather, despite fact that payments were periodically made, contract was unitary agreement and thus, breach of contract action was barred by statute of limitations. D.C. Code 1981, § 12-301. *Construction Interior Sys., Inc. v. Donohoe Cos.*, 813 F. Supp. 29, 1992 U.S. Dist. LEXIS 20826 (1992).

Occurrence of advance payments from homeowner to unlicensed home improvement contractor within three years of suit to recover those payments did not permit homeowner to recover for payments made more than three years before suit was filed; rather, each payment involved separate violation of home improvement contract or licensing regulation on which statute of limitations ran separately. D.C. Code 1981, §§ 2-501, 2-502, 12-301(8). *Woodruff v. McConkey*, 524 A.2d 722, 1987 D.C. App. LEXIS 333 (1987).

In contract action, statute of limitations begins to run from date contract is breached, and contract is breached when defective work is done. D.C. Code 1981, § 12-301(3, 7). *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1984 D.C. App. LEXIS 554 (1984).

For purposes of action in which homeowner sought compensation for various defects which arose in connection with addition of new room to house, three-year statute of limitations on owner's contract claims would have begun to run when work was completed, and present contract claims would have been time barred absent fraud or existence of continuing promise to maintain, and absent application of discovery rule. D.C. Code 1981, § 12-301(7). *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1984 D.C. App. LEXIS 554 (1984).

Earliest possible date from which statute of limitations for breach of contract could commence was date that third-party beneficiary to transit authority-construction company contract was informed by insurance adjuster that construction company was not legally responsible for damage it caused to telegraph company's underground equipment. D.C. Code § 12-301(7). *Western Union Tel. Co. v. Massman Constr. Co.*, 402 A.2d 1275, 1979 D.C. App. LEXIS 399 (1979).

Three-year period within which to commence action to recover under provision of home improvement contract guaranteeing waterproofing of basement for five years began to run on date contractor breached contract by failing to correct defect on demand, rather than on date wetness recurred. D.C. Code § 12-301(7). *Fowler v. A & A Co.*, 262 A.2d 344, 1970 D.C. App. LEXIS 223 (App. 1970).

Where subcontractor had warranted waterproofing of basement of home for five years, warranty was breached when wetness recurred and three-year period of limitations governing contractor's right to recover against subcontractor began to run on date wetness recurred.

D.C. Code § 12-301(7). *Fowler v. A & A Co.*, 262 A.2d 344, 1970 D.C. App. LEXIS 223 (App. 1970).

Contract is breached when defective work is done and statute of limitations begins to run from that time. *Lieberman v. Aldon Const. Co.*, 125 A.2d 517, 1956 D.C. App. LEXIS 235 (Cr.App. 1956).

Where house as constructed and delivered to plaintiffs by defendants was defective, cause of action accrued at time of settlement rather than when defendants abandoned their efforts to remedy defective condition. *Lieberman v. Aldon Const. Co.*, 125 A.2d 517, 1956 D.C. App. LEXIS 235 (Cr.App. 1956).

— Continuing injury or treatment, accrual of right of action or defense.

Under District of Columbia law, plaintiff establishes a continuing tort by showing a continuous and repetitious wrong with damages flowing from the act as a whole rather than from each individual act and at least one injurious act within the limitation period. *Whelan v. Abell*, 953 F.2d 663, 1992 U.S. App. LEXIS 417 (C.A.D.C. 1992), amended by 1992 U.S. App. LEXIS 6180 (D.C. Cir. Mar. 30, 1992), writ of certiorari denied by 506 U.S. 906, 113 S. Ct. 300, 121 L. Ed. 2d 223, 1992 U.S. LEXIS 6329, 61 U.S.L.W. 3264 (1992).

Ongoing prosecution of a lawsuit can suffice as a continuing tort and it may be found to constitute tortious interference with business opportunities which did not exist at the time that the suit was filed but which did come into existence during the time that the lawsuit was being prosecuted. *Whelan v. Abell*, 953 F.2d 663, 1992 U.S. App. LEXIS 417 (C.A.D.C. 1992), amended by 1992 U.S. App. LEXIS 6180 (D.C. Cir. Mar. 30, 1992), writ of certiorari denied by 506 U.S. 906, 113 S. Ct. 300, 121 L. Ed. 2d 223, 1992 U.S. LEXIS 6329, 61 U.S.L.W. 3264 (1992).

Tort and civil rights action arising from discharge of plaintiff as a civilian air force employee was barred by three-year statute of limitations despite contention that, even if the wrong was fully accomplished at the time of his dismissal, the harm that emerged in succeeding years was too speculative to recover on in advance, so that plaintiff should be able to recover for damage suffered in the three years preceding the filing of the complaint involving alleged injury to reputation, dignity, privacy and career as well as mental distress; fact of injury was sufficiently plain for cause of action to accrue at time of discharge since plaintiff was aware of the wrongs done, even though the extent and precise nature of the injury had not yet developed. D.C. Code § 12-301(8); 42 U.S.C. §§ 1985(3), 1986. *Fitzgerald v. Seamans*, 553 F.2d 220, 1977 U.S. App. LEXIS 14625 (C.A.D.C. 1977).

Where continuing violations were alleged, complaint under statute providing that all persons within United States shall have same right to make and enforce contracts as is enjoyed by white citizens was not barred by limitation. 42 U.S.C. § 1981; D.C. Code § 12-301(7, 8). *Macklin v. Spector Freight Systems, Inc.*, 478 F.2d 979, 1973 U.S. App. LEXIS 10026 (C.A.D.C. 1973).

Trustees' alleged mismanagement of finances of Armenian genocide museum was not continuing violation, for limitations purposes. *Armenian Assembly of Am., Inc. v. Cafesjian*, 692 F.Supp.2d 20, 2010 U.S. Dist. LEXIS 21342 (2010).

Non-profit organization's former legal client failed to allege specific acts that demonstrated a continuing violation, and failed to allege that he was unaware of organization's and its officers' alleged appropriation of his likeness until after statute of limitations had run, as would support application of doctrine of continuing violations to former client's claims against organization and officers, and thus claims were barred by one year statute of limitations under District of Columbia law governing invasion of privacy claims. *Paul v. Judicial Watch, Inc.*, 543 F.Supp.2d 1, 2008 U.S. Dist. LEXIS 8266 (2008), dismissed in part by 2008 U.S. Dist. LEXIS 8267 (D.D.C. Feb. 6, 2008).

Under District of Columbia law, the continuous treatment doctrine applies to toll a statute of limitations when an injury or the extent of an injury is not apparent, due to the treating physician's representations or reassurances. *Lewis v. United States*, 173 F.Supp.2d 52, 2001 U.S. Dist. LEXIS 19684 (2001), vacated by 290 F. Supp. 2d 1, 2003 U.S. Dist. LEXIS 23903 (D.D.C. 2003).

Under District of Columbia law, continuing tort theory applied to toll five year limitations period on commercial property owner's negligence and strict liability claims against gasoline company on adjacent lot, which alleged that gasoline leaking from company's underground storage tanks (USTs) caused damage to owner's property; gasoline continued to migrate onto owner's property, such migration was incapable of hermetic division, and some leaking took place within the limitations period. D.C. Code 1981, § 12-301(10). *National Tel. Coop. Ass'n v. Exxon Corp.*, 38 F.Supp.2d 1, 1998 U.S. Dist. LEXIS 21058 (1998).

Under District of Columbia law, a plaintiff establishes a "continuing tort," as would toll statute of limitations, by showing: (1) a continuous and repetitious wrong; (2) with damages flowing from the act as a whole rather than from each individual act; and (3) at least one injurious act within the limitation period. *National Tel. Coop. Ass'n v. Exxon Corp.*, 38 F.Supp.2d 1, 1998 U.S. Dist. LEXIS 21058 (1998).

Allegations by police officer that other officers engaged in series of retaliatory and harassing action acts over three year period were sufficient to state continuing tort violation for purposes of three year statute of limitations on police officer's intentional infliction of emotional distress claim under District of Columbia law. D.C. Code 1981, § 12-301(8). *Cooke-Seals v. District of Columbia*, 973 F. Supp. 184, 1997 U.S. Dist. LEXIS 11110 (1997).

To satisfy continuing tort doctrine under District of Columbia law, complaint must allege (1) continuous and repetitious wrong; (2) with damages flowing from act as a whole, rather than from each individual act, and (3) at least one injurious act within limitations period. *Cooke-Seals v. District of Columbia*, 973 F. Supp. 184, 1997 U.S. Dist. LEXIS 11110 (1997).

Under District of Columbia law, although each individual instance of alleged assault and battery gave rise to separate claim of assault and battery and, perhaps, to separate claim of intentional infliction of emotional distress, the cumulative and synergistic effect of the alleged actions also gave rise to claim of a continuing tort of intentional infliction of emotional distress and under the continuing tort doctrine, the date that the limitations period began to run was the date of the last alleged tortious act, such that plaintiff's claim of intentional infliction of emotional distress based on the cumulative effect of all the alleged incidents was not time barred. *Rendall-Speranza v. Nassim*, 942 F. Supp. 621, 1996 U.S. Dist. LEXIS 19710 (1996), reversed by 107 F.3d 913, 323 U.S. App. D.C. 280, 1997 U.S. App. LEXIS 4720, 37 Fed. R. Serv. 3d (Callaghan) 12 (1997).

Purchaser's claims against prior owners of property containing leaking underground storage tanks (USTs) asserted claims in nature of continuing tort and, thus, claims did not accrue until cessation of wrongful conduct at time of remediation of contamination. D.C. Code 1981, § 12-301(3). 325-343 E. 325-343 E. 56th St. Corp. v. Mobil Oil Corp., 906 F. Supp. 669, 1995 U.S. Dist. LEXIS 16895 (1995).

If encroachment is continuing trespass, cause of action accrues on date of trespass continues until three years after encroachment is removed, while if invasion is deemed permanent, there is but one cause of action and statute of limitation commences to run from time invasion began or when it became known to the aggrieved party. D.C. Code 1981, § 12-301(3). *Kayfirst Corp. v. Washington Terminal Co.*, 813 F. Supp. 67, 1993 U.S. Dist. LEXIS 1331 (1993).

Factual issues existed, precluding dismissal under three-year District of Columbia statute of limitations, on whether continuing tort doctrine applied in action against attorney for allegedly receiving improper payments from savings and loan association; it was not clear

whether separate payments were discrete events or continuous stream of improper conduct. D.C. Code 1981, § 12-301(8). *Resolution Trust Corp. v. Gardner*, 788 F. Supp. 26, 1992 U.S. Dist. LEXIS 3618 (1992).

Continuing tort doctrine under which a plaintiff can bring his action against all of a defendant's wrongful conduct, as long as any of it occurred during the limitation period, did not apply, under District of Columbia law, to fraud claim against lender; although plaintiff continued to suffer injury within the statutory period, he had already suffered significant injury prior to the limitation period; plaintiff had to establish that lender continued his tortious conduct within the limitation period, and the fact that lender sent a single dunning notice during that period failed to satisfy requirement. D.C. Code 1981, § 12-301(8). *Perkins v. Nash*, 697 F. Supp. 527, 1988 U.S. Dist. LEXIS 14636 (1988).

Black FBI agent's common-law tort actions against fellow agents alleged cumulative and synergistic effect of allegedly wrongful conduct and thus, under continuing tort doctrine, three-year statute of limitations period had not elapsed as measured from date on which conduct ceased. D.C. Code 1981, § 12-301(8). *Rochon v. FBI*, 691 F. Supp. 1548, 1988 U.S. Dist. LEXIS 8760 (1988).

Assuming that group with whom plaintiff dealt at formative stages of his venture was branch of foreign republic and that group's officials acted in concert with employees of instrumentalities of foreign republic, plaintiff's claims against foreign republic of misappropriation of trade secret were barred by applicable three-year statute of limitations, where most recent contact with group occurred four and one-half years prior to filing of complaint. D.C. Code 1981, § 12-301. *Gilson v. Republic of Ireland*, 606 F. Supp. 38, 1984 U.S. Dist. LEXIS 15431 (1984), affirmed by 787 F.2d 655, 252 U.S. App. D.C. 99, 1986 U.S. App. LEXIS 23729, 229 U.S.P.Q. (BNA) 460 (1986).

Former employee's allegations all stemmed from employer's alleged failure to promote him, and thus did not allege a continuing tort so as to toll applicable three-year statute of limitations, under District of Columbia law, for negligence claims; therefore, former employee's claim that failure of employer to adequately maintain his employment records and to have those records at its office in Washington D.C. was an independent tort for negligence was time barred. D.C. Code 1981, § 12-301(8); 18 U.S.C. §§ 1346(b), 2671 et seq. *Prouty v. National R. Passenger Corp.*, 572 F. Supp. 200, 1983 U.S. Dist. LEXIS 12963 (1983).

Notwithstanding claim that alleged unconstitutional actions on part of defendants in allegedly drugging, repatriating, and hospitalizing plaintiff against his will ceased more than three years prior to filing of suit, where litiga-

tion involved an allegedly ongoing tort, so that cause of action did not accrue until tortious activity had ceased, three-year period of limitations in District of Columbia statute was not a bar to suit. D.C. Code § 12-301(8). *Logiurato v. Action*, 490 F. Supp. 84, 1980 U.S. Dist. LEXIS 13108 (1980).

Former government employee could not maintain action against government officials for alleged conspiracy to deprive him of his job more than three years after employee's dismissal on ground that conspiracy which caused dismissal, though admittedly occurring outside three-year period set by statute of limitations, continued within the period where no independently actionable acts causing injury were alleged to have occurred within the limitations period. D.C. Code § 12-301(8). *Fitzgerald v. Seamans*, 384 F. Supp. 688, 1974 U.S. Dist. LEXIS 6366 (1974), affirmed in part by 553 F.2d 220, 180 U.S. App. D.C. 75, 1977 U.S. App. LEXIS 14625 (1977).

Continuing tort exception to statute of limitations did not permit former government employee to maintain action against government officials for alleged conspiracy to deprive him of his job more than three years following his dismissal where there was no repetition of wrongful conduct within three years immediately prior to filing of the lawsuit, despite contention that former employee suffered continuing injury due to alleged conspirators' refusal to remedy the prior wrong by reinstating the employee. D.C. Code § 12-301(8). *Fitzgerald v. Seamans*, 384 F. Supp. 688, 1974 U.S. Dist. LEXIS 6366 (1974), affirmed in part by 553 F.2d 220, 180 U.S. App. D.C. 75, 1977 U.S. App. LEXIS 14625 (1977).

Abuse of process cause of action by debtor against secured creditor arose, for purpose of District of Columbia residuary statute of limitations, when creditor obtained covenant and filed it with recorder of deeds, and continuing tort doctrine did not apply; debtor did not allege series of acts by secured creditor that would be a claim for abuse of process, but, rather, alleged two distinct incidents as cause of harm. D.C. Code 1981, § 12-301(8). *Rothenberg v. Ralph D. Kaiser Co. (In re Rothenberg)*, 173 B.R. 4, 1994 Bankr. LEXIS 1435 (1994).

Under the "continuing treatment rule," the limitation period for filing suit for claims arising from a doctor's treatment will be tolled until the doctor ceases to treat the patient in the specific matter at hand. *Berkow v. Hayes*, 841 A.2d 776, 2004 D.C. App. LEXIS 41 (2004).

Continuing treatment rule did not toll three-year limitations period for filing malpractice suit against cardiologist whose diagnostic failure allegedly allowed malignancy to grow substantially before it was discovered, albeit inaccurately, by another physician, where cardiologist did not continue to treat patient for

lack of femoral pulse signals that, according to patient, should have alerted cardiologist to the existence of a physical condition, such as a cancerous growth, and there was no evidence that cardiologist's continuing treatment of patient's cardiac condition embraced continuing treatment germane to the malignancy. *Berkow v. Hayes*, 841 A.2d 776, 2004 D.C. App. LEXIS 41 (2004).

A "continuing tort" can be established for statute of limitations purposes by showing (1) a continuous and repetitious wrong, (2) with damages flowing from the act as a whole rather than from each individual act, and (3) at least one injurious act within the limitation period. *Beard v. Edmondson & Gallagher*, 790 A.2d 541, 2002 D.C. App. LEXIS 15 (2002).

Once the plaintiff has been placed on notice of an injury and the role of the defendants' wrongful conduct in causing it, the policy disfavoring stale claims makes application of the continuous tort doctrine inappropriate. *Beard v. Edmondson & Gallagher*, 790 A.2d 541, 2002 D.C. App. LEXIS 15 (2002).

When the plaintiff is or should be aware that he or she is being injured by a continuing tort, the statute of limitations begins to run; the plaintiff then may recover only for injuries attributable to the part of the continuing tort that was committed within the limitations period immediately preceding the date on which suit is brought. *Beard v. Edmondson & Gallagher*, 790 A.2d 541, 2002 D.C. App. LEXIS 15 (2002).

Continuous treatment rule is applicable to medical malpractice cases, and thus, in medical malpractice actions involving continuing treatment for the same or related illness or injury, the cause of action is tolled, for statute of limitations purposes, until the doctor ceases to treat the patient in the specific matter at hand. *Anderson v. George*, 717 A.2d 876, 1998 D.C. App. LEXIS 173 (1998).

Each of employer's allegedly defamatory statements constituted new assault on employee's reputation, and thus, each gave rise to separate right of action for statute of limitations purposes; continuing tort doctrine was not applicable since complaint alleged that employer made number of discrete defamatory communications. D.C. Code 1981, § 12-301(4). *Wallace v. Skadden, Arps, Slate, Meagher & Flom*, 715 A.2d 873, 1998 D.C. App. LEXIS 138 (1998).

Practitioner of transcendental medication (TM) could not rely on continuous tort doctrine to save fraud-based claims against organizations that promoted and taught TM, once practitioner had been placed on notice of injury and role of defendants' wrongful conduct in causing it. *Hendel v. World Plan Exec. Council*, 705 A.2d 656, 1997 D.C. App. LEXIS 290 (1997).

Concealed encroachment on lessee's land buried at least 23 feet below surface, which encroachment was not likely to remain indefinitely, constituted a continuing trespass, and thus lessee's cause of action for trespass accrued on date of trespass and continued until three years after encroachment had been removed; therefore, where lessee filed suit within three years of removal of encroachment, lessee's recovery of damages resulting from trespass during three-year statutory period preceding filing of suit was not barred. D.C. Code § 12-301(3). *L'Enfant Plaza East, Inc. v. John McShain, Inc.*, 359 A.2d 5, 1976 D.C. App. LEXIS 295 (1976).

— Contracts in general, accrual of right of action or defense.

Under District of Columbia law, general rule is that a claim for breach of contract accrues when the contract is first breached, although statute of limitations may begin to run upon date contract is terminated under certain circumstances. *Material Supply Int'l, Inc. v. Sunmatch Indus. Co.*, 146 F.3d 983, 1998 U.S. App. LEXIS 15317 (C.A.D.C. 1998).

Under District of Columbia law, in action arising from tool seller's dispute with manufacturer over "SUNTECH" trademark, statute of limitations on seller's breach of contract claim began to run on date that manufacturer allegedly breached contract. *Material Supply Int'l, Inc. v. Sunmatch Indus. Co.*, 146 F.3d 983, 1998 U.S. App. LEXIS 15317 (C.A.D.C. 1998).

Warrant-holder's breach of contract claim against surviving corporation under District of Columbia law, seeking same consideration as holder of restricted shares, was timely because warrant-holder sought not just cash that restricted shareholders were paid, but also cash dividend they received. *Gandal v. Telemundo Group*, 23 F.3d 539, 1994 U.S. App. LEXIS 11717 (C.A.D.C. 1994).

Action against trustee and administrators of pension plan for breaching agreement to pay lump sum to retired union president by refusing to release portion of the lump-sum benefit remaining in escrow account was not barred by District of Columbia's three-year statute of limitations where, though action was brought more than three years after agreement was entered into, it was brought less than three years after date on which president was entitled to release of the amount in escrow account. D.C. Code 1973, § 12-301. *Hoffa v. Fitzsimmons*, 673 F.2d 1345, 1982 U.S. App. LEXIS 20676 (C.A.D.C. 1982).

Where lender's transferee purchased note and deed of trust in 1961, all installments due were paid until 1966 when borrower's grantee filed petition for reorganization, transferee filed a proof of claim later that year, trustee in bankruptcy objected to the claim in 1968 on

ground that the loan was made in violation of Loan Shark Act, and loan and accompanying deed were declared void in 1971, action instituted by transferee in December, 1972 to recover its loss from lender was not barred by District of Columbia three-year limitation period for actions based on contract, despite argument that transferee's claim accrued when it purchased the note and deed. D.C. Code §§ 12-301(7), 26-601 et seq. *Hartford Life Ins. Co. v. Title Guarantee Co.*, 520 F.2d 1170, 1975 U.S. App. LEXIS 12398 (C.A.D.C. 1975).

Even if tenant's action against landlord for injuries sustained when stair railing broke were deemed one for breach of contract, cause of action accrued at date of injury, rather than at date railing was repaired in allegedly faulty manner. D.C. Code 1951, § 12-201. *Hanna v. Fletcher*, 231 F.2d 469, 1956 U.S. App. LEXIS 3414 (C.A.D.C. 1956).

A bailor's right of action accrues only after bailee's breach of duty under contract, and hence statute of limitations begins to run only from time of refusal to perform the contract, so that statute does not begin to run against bailor until there has been a denial of bailment and conversion of property by bailee, or some other act of bailee inconsistent with bailment. D.C. Code 1940, § 12-201. *Schupp v. Taendler*, 154 F.2d 849, 1946 U.S. App. LEXIS 2121 (1946).

An action to recover personalty which plaintiffs had turned over to defendant, who agreed to keep it until plaintiffs should ask for it, which action was commenced within three years after demand and refusal to deliver the personalty, was not barred by three-year statute of limitations, since limitation does not begin to run against bailor until there has been a denial of bailment and conversion of property by bailee. D.C. Code 1940, § 12-201. *Schupp v. Taendler*, 154 F.2d 849, 1946 U.S. App. LEXIS 2121 (1946).

Limitations periods for retired police officers' claims against District of Columbia, alleging that the District failed to pay them basic and overtime compensation for fulfilling the duties of "detective sergeants," in violation of District of Columbia law and the Fair Labor Standards Act (FLSA), began to run when their paychecks did not include compensation for performing the duties of detective sergeants during the preceding pay period. *Abate v. District of Columbia*, 659 F.Supp.2d 156, 2009 U.S. Dist. LEXIS 92827 (2009).

Under District of Columbia law, the date that the plaintiff discovered that her husband was not buried in the plot for which she had contracted with the cemetery for his burial was the accrual date for her breach of contract claim against cemetery and funeral director, and for her intertwined claims against them of negligence, intentional infliction of emotional distress, negligent infliction of emotional distress,

breach of implied covenant of good faith, conversion, and professional malpractice, for purposes of three-year limitation period. *Tolbert v. Nat'l Harmony Mem'l Park*, 520 F.Supp.2d 209, 2007 U.S. Dist. LEXIS 82963 (2007).

Under District of Columbia law, under certain circumstances, the statute of limitations may be tolled where the fact of injury was not readily apparent and indeed might not become apparent until several years after the incident causing the injury had occurred. *Wash. Metro. Area Transit Auth. v. Quik Serve Foods, Inc.*, 402 F.Supp.2d 198, 2005 U.S. Dist. LEXIS 36130 (2005).

Under District of Columbia law, shipper's claims against carrier for breach of contract and negligence accrued upon expiration of period during which carrier agreed to store goods, rather than on date carrier arranged for its delegates to transport and store goods, where contract called for storage of goods, and goods were sold when carrier failed to ensure payment to delegatee storage facility. *Byrd v. Admiral Moving & Storage, Inc.*, 355 F.Supp.2d 234, 2005 U.S. Dist. LEXIS 372 (2005).

Under District of Columbia law, the statute of limitations on express or implied contract claims begins to run from the date a contract is breached. *Allison v. Howard Univ.*, 209 F.Supp.2d 55, 2002 U.S. Dist. LEXIS 15973 (2002).

Statute of limitations on law student's contract claim against law school for expelling him in violation of representations in school brochures accrued on date that formal decision to expel student was made and communicated to him, and thus suit was time barred under District of Columbia law when not brought within three years of that date. *Allison v. Howard Univ.*, 209 F.Supp.2d 55, 2002 U.S. Dist. LEXIS 15973 (2002).

Any breach of contract claim arising from representations made through course syllabus about how student's grade would be determined accrued on date that student was notified of his failing grade in course, and thus was time-barred under District of Columbia law when not brought within three years of that date. *Allison v. Howard Univ.*, 209 F.Supp.2d 55, 2002 U.S. Dist. LEXIS 15973 (2002).

Statute of limitations on former landlord's action against former tenant, seeking reimbursement of environmental cleanup costs, did not begin to run until municipal fire department notified former landlord of hazard presented by underground fuel tanks, even though former landlord knew of tanks previously; former tenant had assumed duty of inspecting premises and correcting conditions as required by law as part of lease. D.C. Code 1981, § 12-301(10). *Minkoff v. Clark Transfer*, 841 F.Supp. 424, 1993 U.S. Dist. LEXIS 18835 (1993), ap-

peal dismissed by 1994 U.S. App. LEXIS 19248 (D.C. Cir. Apr. 20, 1994).

Under District of Columbia law, action for breach of contract runs from time of breach or completion of contract. D.C. Code 1981, § 12-301(7, 8). *Computer Data Systems, Inc. v. Kleinberg*, 759 F. Supp. 10, 1990 U.S. Dist. LEXIS 18944 (1990).

Three-year statute of limitations for contract actions began to run as to employee's suit challenging termination of long-term disability insurance benefits as of date insurer terminated benefits, 24 months after benefits had begun, based on determination that he suffered disability caused by mental disease, for which policy provided 24 months benefits, rather than two years earlier when insurer notified employee of its intention to provide benefits for only two years, not until employee was 65 as it was required to do for physical injuries. D.C. Code 1981, § 12-301(7); *Employee Retirement Income Security Act of 1974*, § 2 et seq., 29 U.S.C. § 1001 et seq. *Akins v. Washington Metropolitan Area Transit Authority*, 729 F. Supp. 903, 1990 U.S. Dist. LEXIS 1067 (1990).

Limitations period on contract action runs from time contract is breached, under District of Columbia law. D.C. Code 1981, § 12-301(7); *Employee Retirement Income Security Act of 1974*, § 2 et seq., 29 U.S.C. § 1001 et seq. *Akins v. Washington Metropolitan Area Transit Authority*, 729 F. Supp. 903, 1990 U.S. Dist. LEXIS 1067 (1990).

Computer program developer failed to establish that claims relating to breach of program development agreement accrued by date that separate agreement with developer to purchase health care facilities was terminated, so that claims would be time barred. D.C. Code 1981, § 12-301. *Abramson v. Wallace*, 706 F. Supp. 1, 1989 U.S. Dist. LEXIS 1474 (1989).

Date of secured party's foreclosure on note secured by stock was date of alleged breach of duty of good faith and fair dealing and breach of fiduciary duty and triggered three-year District of Columbia statute of limitations for breach of contract and breach of fiduciary duty. D.C. Code 1981, § 12-301(7, 8). *Riddell v. Riddell Washington Corp.*, 680 F. Supp. 4, 1987 U.S. Dist. LEXIS 13058 (1987), affirmed in part and reversed in part by 866 F.2d 1480, 275 U.S. App. D.C. 362, 1989 U.S. App. LEXIS 1267, 8 U.C.C. Rep. Serv. 2d (CBC) 575 (1989).

District of Columbia's three-year limitation period applicable to breach of contract for additional janitorial services brought by railroad company began to run when railroad station failed to provide additional services. D.C. Code 1981, § 12-301. *National R. Passenger Corp. v. Notter*, 677 F. Supp. 1, 1987 U.S. Dist. LEXIS 12582 (1987).

District of Columbia's statute of limitations for contract actions begins to run from time of

breach. D.C. Code 1981, § 12-301(7). *Prouty v. National R. Passenger Corp.*, 572 F. Supp. 200, 1983 U.S. Dist. LEXIS 12963 (1983).

Generally, under District of Columbia law, accrual for contract cases occurs when the contract is first breached. *Plan Comm. v. PricewaterhouseCoopers, LLP*, 335 B.R. 234, 2005 U.S. Dist. LEXIS 18889 (2005), dismissed by 2007 U.S. Dist. LEXIS 29240 (D.D.C. Apr. 20, 2007).

Any contract-based claim that real estate broker had to commission, which was subject of vendor's action seeking declaration that the funds belonged to vendor, accrued under discovery rule at time when vendor represented to broker that he would pay not pay any commission, and therefore the three-year statute of limitations for contract-based claims barred any claim of broker to commission. *Medhin v. Hailu*, 26 A.3d 307, 2011 D.C. App. LEXIS 498 (2011).

Any contract-based claim that real estate broker had to commission, which was subject of vendor's action seeking declaration that the funds belonged to vendor, accrued under discovery rule at time when vendor represented to broker that he would not pay any commission, and therefore the three-year statute of limitations for contract-based claims barred any claim of broker to commission. *Medhin v. Hailu*, 26 A.3d 307, 2011 D.C. App. LEXIS 498 (2011).

For purposes of determining when home mortgagors' claim for breach of contract accrued, for limitations purposes, based on mortgagee's breach of its obligation, for which no time for performance was specified in the settlement agreement in mortgage foreclosure action, to advise credit reporting agencies that the foreclosure action had been mistakenly initiated, the reasonable time for performance would not be construed as being as long as two years and ten months after execution of agreement, so that mortgagors' claim for breach of contract, asserted five years and ten months after execution of agreement, would be timely under three-year limitations period for breach of contract claim; the appearance of a foreclosure in a consumer credit report could have serious consequences, e.g., it could result in denial of a loan application. *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 2008 D.C. App. LEXIS 296 (2008).

A cause of action for breach of contract accrues, and the statute of limitations begins to run, at the time of the breach. *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 2008 D.C. App. LEXIS 296 (2008).

Three-year limitations period governing former Catholic school principal's breach of contract claim against archdiocese began to run when double one-month's salary allegedly promised under contract was not paid. *Pardue v. Ctr. City Consortium Schs. of the Archdiocese*

of Wash., Inc., 875 A.2d 669, 2005 D.C. App. LEXIS 270 (2005), writ of certiorari denied by 546 U.S. 1003, 126 S. Ct. 619, 163 L. Ed. 2d 506, 2005 U.S. LEXIS 8243, 74 U.S.L.W. 3288, 96 Fair Empl. Prac. Cas. (BNA) 1440 (2005).

Former university professor did not show that her time-barred breach of contract claims against university and its employees satisfied the requirements of the "discovery rule" so as to toll the running of the statute of limitations; professor knew of her injury (the denial of tenure for undisclosed reasons despite her apparent qualifications without an interim opportunity to petition for reconsideration) and threatened to sue university more than three years before she ultimately filed her complaint, and fact that professor might not have learned certain details until later, such as dean's alleged duplicity in damning her application with faint praise after telling her that he would support it, was not enough to excuse her inaction. *Harris v. Ladner*, 828 A.2d 203, 2003 D.C. App. LEXIS 432 (2003).

In an action for breach of a contract or lease, the statute of limitations runs from the time of the breach. *Bembery v. District of Columbia*, 758 A.2d 518, 2000 D.C. App. LEXIS 216 (2000).

Where a debt is payable in independent installments, the right of action accrues upon each as it matures. *Bembery v. District of Columbia*, 758 A.2d 518, 2000 D.C. App. LEXIS 216 (2000).

Where a suit is brought to recover installment obligations then due and owing, complete relief need not be sought in that action as to future payments; to the contrary, successive suits may be brought as new installments come due. *Keefe Co. v. Americable Int'l, Inc.*, 755 A.2d 469, 2000 D.C. App. LEXIS 165 (2000), remanded by 219 F.3d 669, 343 U.S. App. D.C. 9, 2000 U.S. App. LEXIS 19966 (2000).

Accrual of cause of action for contract cases occurs when contract is first breached. *Capitol Place I Assocs. L.P. v. George Hyman Constr. Co.*, 673 A.2d 194, 1996 D.C. App. LEXIS 46 (1996).

Statute of limitations applicable to client's action against law firm for return of portion of retainer began to run when client's president received firm's billing letter in which firm refused president's demand to return retainer, and not on earlier date when firm sent billing letter, addressed to both president and another employee, but received only by other employee, who did not inform president of its receipt. D.C. Code 1981, § 12-301. *Kerns v. Ameriprint, Inc.*, 621 A.2d 381, 1993 D.C. App. LEXIS 48 (1993).

Statute of limitations begins to run when contract is breached. D.C. Code § 12-301(7). *Western Union Tel. Co. v. Massman Constr. Co.*, 402 A.2d 1275, 1979 D.C. App. LEXIS 399 (1979).

Any damages to lessor's premises arising out of alleged breach of lease by lessee by permitting unsuitable persons to occupy premises must have occurred on or prior to date on which lessee vacated premises, and thus statute of limitations commenced to run as of date of vacation of premises. *Shehyn v. District of Columbia*, 392 A.2d 1008, 1978 D.C. App. LEXIS 326 (1978).

Generally, statute of limitations begins to run from date a contract is breached. D.C. Code § 12-301(7). *Dillard v. Travelers Ins. Co.*, 298 A.2d 222, 1972 D.C. App. LEXIS 305 (1972).

Statute of limitations in action for breach of contract, including breach of warranty, runs from time of breach or completion of contract. D.C. Code §§ 12-301, 28-2-725(1, 2, 4). *Sears, Roebuck & Co. v. Goudie*, 290 A.2d 826, 1972 D.C. App. LEXIS 382 (1972), writ of certiorari denied by 409 U.S. 1049, 93 S. Ct. 523, 34 L. Ed. 2d 501, 1972 U.S. LEXIS 514 (1972).

Statute of limitations begins to run in District of Columbia from date contract is breached. D.C. Code § 12-301(7). *Fowler v. A & A Co.*, 262 A.2d 344, 1970 D.C. App. LEXIS 223 (App. 1970).

A "breach" of contract for purpose of statute of limitations is an unjustified failure to perform all or any part of what is promised in contract, entitling injured party to damages. *Fowler v. A & A Co.*, 262 A.2d 344, 1970 D.C. App. LEXIS 223 (App. 1970).

Where printer stopped work on project for defendant in July 1960 and sent a bill to defendant and his wife at that time, it was at that time his cause of action arose and complaint filed in February 1963 was not barred by the three-year statute of limitations. *Dawson v. Drazin*, 223 A.2d 375, 1966 D.C. App. LEXIS 238 (App. 1966).

The statutory three year limitation of actions based on simple contract begins to run from date of breach, and fact that party was unaware of breach or fact that damages were not immediately ascertainable will not toll the statute. D.C. Code 1951, § 12-201. *Foley Corp. v. Dove*, 101 A.2d 841, 1954 D.C. App. LEXIS 208 (Cr.App. 1954).

Where contract for sale of house provided that basement should be dry and should remain dry for three years and purchasers took possession in September, 1941, and complained of wet basement in November, 1941, and repeated efforts were made to remedy the basement until in June, 1943, warranty and remedy for its breach were kept alive, and statute of limitations did not begin to run until date of discontinuance of efforts to remedy basement, and action filed on December 4, 1944, for breach of warranty was timely. D.C. Code 1940,

§ 12-201. *Cole v. Zellan*, 55 A.2d 516, 1947 D.C. App. LEXIS 185 (Cr.App. 1947).

— **Covenants and conditions, accrual of right of action or defense.**

Under District of Columbia law, three-year statute of limitations for plaintiff's conversion claim against former landlord began to run when he tried to return to his office to collect his personal belongings, but was denied access. *Curtis v. Lanier*, 535 F.Supp.2d 89, 2008 U.S. Dist. LEXIS 14914 (2008).

Statute of limitations began to run on railroad's claims for breach of covenant of quiet enjoyment and for constructive eviction against railroad station when government began occupation of disputed space in railroad station pursuant to separate agreement with railroad station. D.C. Code 1981, § 12-301. *National R. Passenger Corp. v. Notter*, 677 F. Supp. 1, 1987 U.S. Dist. LEXIS 12582 (1987).

— **False arrest, accrual of right of action or defense.**

Under District of Columbia law, one-year statute of limitations for claims of false arrest and false imprisonment begins to run the moment that the plaintiff suffers injury, that is, when the individual is arrested or imprisoned. *Curtis v. Lanier*, 535 F.Supp.2d 89, 2008 U.S. Dist. LEXIS 14914 (2008).

Under District of Columbia law, one-year statute of limitations for arrestee's claims of false arrest and false imprisonment against police chief and detectives, which arose from two separate arrests, began to run on dates he was arrested. *Curtis v. Lanier*, 535 F.Supp.2d 89, 2008 U.S. Dist. LEXIS 14914 (2008).

— **Fraud, accrual of right of action or defense.**

Under District of Columbia law, former law student's claims of fraud about anonymous grading systems and law school exams accrued, and three-year statute of limitations began to run, while student was enrolled at law schools; student had knowledge of the alleged fraud before graduation. *Richards v. Duke Univ.*, 480 F.Supp.2d 222, 2007 U.S. Dist. LEXIS 22864 (2007), affirmed by 2007 U.S. App. LEXIS 30275 (D.C. Cir. Aug. 27, 2007).

Alleged misrepresentations by non-profit organization, that organization was organized under laws of Belgium and that Belgium was the place from which the organization published its analytical reports, were not specifically directed to Serbian businessman and his affiliated companies, and thus, District of Columbia's lulling doctrine did not provide a basis for precluding organization from asserting statute of limitations defense to businessman's and

companies' defamation claims; alleged misrepresentations were made to the general public, in organization's published analytical reports and organization's web site. *Jankovic v. Int'l Crisis Group*, 429 F.Supp.2d 165, 2006 U.S. Dist. LEXIS 24520 (2006), affirmed in part and reversed in part by, remanded by 494 F.3d 1080, 377 U.S. App. D.C. 434, 2007 U.S. App. LEXIS 17511 (2007), remanded by 593 F.3d 22, 389 U.S. App. D.C. 170, 2010 U.S. App. LEXIS 1978, 38 Media L. Rep. (BNA) 1399 (2010).

Dunning notice did not delay accrual of three-year District of Columbia statute of limitations on fraud claim, notwithstanding plaintiff's assertion that dunning notice represented the "second phase of the fraud," as the misrepresentation of the legal effect of the plaintiff's having signed a loan agreement; misrepresentation of law is not a basis for fraud, and notice was nothing more than a straightforward declaration by lender regarding his rights. D.C. Code 1981, § 12-301(8). *Perkins v. Nash*, 697 F. Supp. 527, 1988 U.S. Dist. LEXIS 14636 (1988).

Fraudulent misrepresentation claim brought by product developer against pest control company, alleging that company was selling product incorporating developer's technology, accrued upon developer's discovery of purported illegal conduct, pursuant to District of Columbia discovery rule; parties' non-adversarial relationship would not have prompted developer to investigate company's consumer products catalog to uncover alleged misappropriations of technology. *McQueen v. Woodstream Corp.*, 244 F.R.D. 26, 2007 U.S. Dist. LEXIS 58119 (2007).

Since former patients' fraud claims against psychiatric hospital were completely dependent upon and intertwined with their medical malpractice claims, fraud claims accrued at same time as claims for medical malpractice. D.C. Code 1981, § 12-301(8). *Morton v. National Med. Enters.*, 725 A.2d 462, 1999 D.C. App. LEXIS 21 (1999).

Customer's action against telephone company for fraudulent misrepresentation did not accrue, for statute of limitations purposes, on date contract for provision of telephone equipment was formed; claim was not based on furnishing of obsolete equipment, a fact which customer was aware of at time it entered into contract, but on telephone company's alleged misrepresentations that it could nonetheless provide adequate service through proper maintenance and repair. D.C. Code 1981, § 12-301(8). *Professional Answering Service, Inc. v. Chesapeake & Potomac Tel. Co.*, 565 A.2d 55, 1989 D.C. App. LEXIS 200 (1989).

Three-year statute of limitations did not bar defrauded parties from raising fraud as defense to judicial foreclosure of deed of trust or to suit for payment under trust note. D.C. Code § 12-

301. *King v. Kitchen Magic, Inc.*, 391 A.2d 1184, 1978 D.C. App. LEXIS 307 (1978).

— Implied contracts, accrual of right of action or defense.

Home mortgagors' claim against mortgagee for breach of duty of good faith and fair dealing, relating to mortgagee's allegedly premature institution of foreclosure proceedings, listing of incorrect cure amount, and refusal to correct the cure amount and postpone the foreclosure sale, accrued, for limitations purposes, when the notice of foreclosure was issued; at such time, the fact of an injury could be readily determined. *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 2008 D.C. App. LEXIS 296 (2008).

The statute of limitations begins to run, on a claim of breach of the implied covenant of good faith and fair dealing, when the implied covenant is breached. *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 2008 D.C. App. LEXIS 296 (2008).

The three-year statute of limitations, for actions on a contract that is express or implied, applies to an action for breach of the implied covenant of good faith and fair dealing. *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 2008 D.C. App. LEXIS 296 (2008).

Cause of action based on breach of implied warranty to do work in workmanlike manner would be barred by statute of limitations where breach occurred more than three years before commencement of action. D.C. Code 1940, § 12-201. *Poole v. Terminix Co. of Md. & Wash.*, 84 A.2d 699, 1951 D.C. App. LEXIS 237 (Cr.App. 1951).

— In general.

Statute of limitations begins to run at time when prospective plaintiff knows or should know through exercise of due diligence of his rights to recover. *Kropinski v. World Plan Executive Council-US*, 853 F.2d 948, 1988 U.S. App. LEXIS 10700 (C.A.D.C. 1988).

Under District of Columbia law, salvager's claim against Republic of Colombia for conversion of sunken treasure at ancient shipwreck site accrued, and three-year limitations period began to run, on date Republic first attempted to take full ownership of shipwreck site. *Sea Search Armada v. Republic of Colom.*, 821 F.Supp.2d 268, 2011 U.S. Dist. LEXIS 122507 (2011).

Under District of Columbia law, discovery rule did not apply to toll three-year period for salvager to bring breach of contract action against Republic of Colombia related to agreement for recovery of sunken treasure from ancient shipwreck site, since salvager knew of alleged breach when Colombian Parliament had enacted law eliminating all of salvager's

property rights in treasure, and salvager had previously filed suit against Republic on identical claim in Republic of Colombia. *Sea Search Armada v. Republic of Colom.*, 821 F.Supp.2d 268, 2011 U.S. Dist. LEXIS 122507 (2011).

Under District of Columbia law, salvager's breach of contract claim against Republic of Colombia accrued, and three year limitations period began to run, no later than date it discovered that Republic had denied it permission to perform full salvage operations at ancient shipwreck site and that Republic had declared itself owner of entire shipwreck site. *Sea Search Armada v. Republic of Colom.*, 821 F.Supp.2d 268, 2011 U.S. Dist. LEXIS 122507 (2011).

Under District of Columbia law, borrower's claim that mortgage lender, mortgage servicer, employer of substituted trustees, mortgagee of record, mortgage brokerages, and mortgage brokers fraudulently conspired to provide borrower with higher interest rate than he should have received and violated Consumer Protection Act accrued when borrower signed final loan documents, despite borrower's contention that his broker never disclosed existence or conditions of yield spread premium (YSP), where settlement statement stated that YSP would be paid "by the Lender" to broker, and all material terms and conditions of mortgage transaction, as well as required disclosures, were provided to borrower when he closed his loan. *Newland v. Aurora Loan Servs., LLC*, 806 F.Supp.2d 65, 2011 U.S. Dist. LEXIS 93280 (2011).

Under District of Columbia law, borrower's claim that mortgage brokerage and mortgage broker breached their fiduciary duties by failing to provide him with best available mortgage rate, failing to provide written document describing service and agreement, failing to disclose yield spread premium (YSP) fee and broker's involvement in loan, charging fees for services not reasonably related to services performed, misrepresenting reason interest note offered by lender was higher than borrower expected, and failing to disclose mandatory prepayment penalty provision of original loan offer accrued, pursuant to discovery rule, when borrower signed final loan documents, where settlement statement stated that YSP would be paid "by the Lender" to broker. *Newland v. Aurora Loan Servs., LLC*, 806 F.Supp.2d 65, 2011 U.S. Dist. LEXIS 93280 (2011).

Consumer's cause of action against beverage maker, alleging that beverage maker's use of high fructose corn syrup in its purportedly "all natural" beverages violated District of Columbia Consumer Protection Procedures Act (CPPA), accrued under discovery rule, thereby triggering three-year limitations period under CPPA, at time he purchased each beverage; the ingredient label on the purchased drinks pro-

vided consumer with all of the information he needed to reasonably question the veracity of beverage maker's "all natural" claim and its significance under the Act and, therefore, Because consumer had inquiry, even if not actual, notice of a claim at the time that he purchased each beverage, he could not rely on the discovery rule to save those long-expired claims. *Silvious v. Snapple Bev. Corp.*, 793 F.Supp.2d 414, 2011 U.S. Dist. LEXIS 68170 (2011).

Former prisoner's claims relating to reversal of his convictions and release from prison due to Brady violations, including constitutional violations pursuant to Bivens and § 1983, against various federal and District of Columbia officials accrued pursuant to the discovery rule under District of Columbia law on the date prisoner was released as the date prisoner discovered his injuries. *Sykes v. United States Att.*, 770 F.Supp.2d 152, 2011 U.S. Dist. LEXIS 26966 (2011), affirmed by 2011 U.S. App. LEXIS 22778 (D.C. Cir. Nov. 10, 2011).

Under District of Columbia law, once either actual or inquiry notice of injury is present, the statute of limitations begins to run as a matter of law. *Reeves v. Eli Lilly & Co.*, 368 F.Supp.2d 11, 2005 U.S. Dist. LEXIS 3957 (2005).

Under the District of Columbia's discovery rule, a cause of action accrues, for statute of limitations purposes, when the plaintiff has knowledge of, or by the exercise of reasonable diligence should have knowledge of: (1) the existence of the injury; (2) its cause in fact; and (3) some evidence of wrongdoing. *Lee v. Wolfson*, 265 F.Supp.2d 14, 2003 U.S. Dist. LEXIS 4013 (2003).

Statute of limitations began to accrue when children actually received payments and at that time realized that interest had not been included in action brought on behalf of minor children by either their parents, guardians, or court appointed education advocates to recover interests for alleged late payments of their attorneys' fees that were voluntarily paid by District of Columbia for legal services provided by their attorneys during administrative proceedings initiated under Individuals with Disabilities Education Act (IDEA); all of children were paid fees they demanded and were only seeking interests for alleged late payment of those fees. *Akinseye v. District of Columbia*, 193 F.Supp.2d 134, 2002 U.S. Dist. LEXIS 6384 (2002), reversed by, remanded by 339 F.3d 970, 358 U.S. App. D.C. 56, 2003 U.S. App. LEXIS 16729 (2003).

Generally, statute of limitations begins to run when plaintiff knows both existence and cause of his injury. *Advantage Health Plan, Inc. v. Knight*, 139 F.Supp.2d 108, 2001 U.S. Dist. LEXIS 5559 (2001).

Under District of Columbia law, for purposes of the statute of limitations, a cause of action accrues when the plaintiff has either actual or

inquiry notice of her cause of action. *Smith v. Brown & Williamson Tobacco Corp.*, 108 F.Supp.2d 12, 2000 U.S. Dist. LEXIS 11574 (2000).

Under District of Columbia law, "actual notice," for limitations purposes, is that notice which a plaintiff actually possesses; "inquiry notice" is that notice which a plaintiff would have possessed after due investigation. *Smith v. Brown & Williamson Tobacco Corp.*, 108 F.Supp.2d 12, 2000 U.S. Dist. LEXIS 11574 (2000).

Under District of Columbia law, a plaintiff is charged with "inquiry notice" of a claim when she knew of: (1) an injury; (2) its cause in fact; and (3) some evidence of wrongdoing by defendants. *Smith v. Brown & Williamson Tobacco Corp.*, 108 F.Supp.2d 12, 2000 U.S. Dist. LEXIS 11574 (2000).

Under District of Columbia statute providing that such must be brought within three years from time cause of action accrues if there is no other limiting statute on point, it is the time the cause of action accrues, not the time the cause of action arises, that is dispositive. D.C. Code § 12-301(8). *Logiurato v. Action*, 490 F. Supp. 84, 1980 U.S. Dist. LEXIS 13108 (1980).

Under District of Columbia law, inquiry notice is the standard for all cases in which discovery rule applies, regardless of the presence or absence of fraud, or the characterization of that fraud; critical question in assessing the existence vel non of inquiry notice is whether plaintiff exercised reasonable diligence under the circumstances in acting or failing to act on whatever information was available to him. *Plan Comm. v. PricewaterhouseCoopers, LLP*, 335 B.R. 234, 2005 U.S. Dist. LEXIS 18889 (2005), dismissed by 2007 U.S. Dist. LEXIS 29240 (D.D.C. Apr. 20, 2007).

Under District of Columbia's discovery rule, fact that plaintiff did not comprehend the full extent of all elements of a cause of action does not matter to commencement of limitations period, for the law of limitations requires only that plaintiff have inquiry notice of the existence of a cause of action. *Plan Comm. v. PricewaterhouseCoopers, LLP*, 335 B.R. 234, 2005 U.S. Dist. LEXIS 18889 (2005), dismissed by 2007 U.S. Dist. LEXIS 29240 (D.D.C. Apr. 20, 2007).

Pursuant to District of Columbia law, it is only necessary, under discovery rule, that plaintiff have inquiry notice of the existence of cause of action for the statute of limitations to begin to run; therefore, plaintiff can be charged with inquiry notice of his claims even if he is not actually aware of each essential element of his cause of action. *Plan Comm. v. PricewaterhouseCoopers, LLP*, 335 B.R. 234, 2005 U.S. Dist. LEXIS 18889 (2005), dismissed

by 2007 U.S. Dist. LEXIS 29240 (D.D.C. Apr. 20, 2007).

When the discovery rule applies under District of Columbia law, cause of action accrues when plaintiff knows or by the exercise of reasonable diligence should know (1) of the injury, (2) its cause in fact, and (3) of some evidence of wrongdoing. *Plan Comm. v. PricewaterhouseCoopers, LLP*, 335 B.R. 234, 2005 U.S. Dist. LEXIS 18889 (2005), dismissed by 2007 U.S. Dist. LEXIS 29240 (D.D.C. Apr. 20, 2007).

Four factors are considered in determining whether the discovery rule is applied to a professional malpractice cause of action under District of Columbia law: (1) the justifiable reliance of plaintiff on the professional skills of those hired to perform their work, (2) the latency of the deficiency, (3) the balance between plaintiff's interest in having the protection of the law and the possible prejudice to defendant, and (4) the interest in judicial economy. *Plan Comm. v. PricewaterhouseCoopers, LLP*, 335 B.R. 234, 2005 U.S. Dist. LEXIS 18889 (2005), dismissed by 2007 U.S. Dist. LEXIS 29240 (D.D.C. Apr. 20, 2007).

Under District of Columbia law, in cases in which the relationship between the fact of injury and the alleged tortious conduct is obscure, court determines when the claim accrues through application of the discovery rule. *Plan Comm. v. PricewaterhouseCoopers, LLP*, 335 B.R. 234, 2005 U.S. Dist. LEXIS 18889 (2005), dismissed by 2007 U.S. Dist. LEXIS 29240 (D.D.C. Apr. 20, 2007).

Under District of Columbia law, when the fact of an injury can be readily determined, a claim accrues at the time plaintiff suffers an alleged injury. *Plan Comm. v. PricewaterhouseCoopers, LLP*, 335 B.R. 234, 2005 U.S. Dist. LEXIS 18889 (2005), dismissed by 2007 U.S. Dist. LEXIS 29240 (D.D.C. Apr. 20, 2007).

Vendor's mere placement of funds in an escrow account pending resolution of a dispute over a commission fee with real estate broker did not relieve broker of his obligation to file suit seeking fees within the applicable limitations period for contract-based claims and did not affect the running of the statute of limitations, under the discovery rule, on broker's claims, where broker was aware of vendor's decision not to pay him a commission. *Medhin v. Hailu*, 26 A.3d 307, 2011 D.C. App. LEXIS 498 (2011).

The statute of limitations begins to run when a claim accrues, and a cause of action accrues when its elements are present, so that the plaintiff could maintain a successful suit. *News World Communs., Inc. v. Thompson*, 878 A.2d 1218, 2005 D.C. App. LEXIS 380 (2005).

Under the "discovery rule," a cause of action accrues for limitations purposes when the

plaintiff has either actual notice of her cause of action or is deemed to be on inquiry notice because if she had met her duty to act reasonably under the circumstances in investigating matters affecting her affairs, such an investigation, if conducted, would have led to actual notice. *Harris v. Ladner*, 828 A.2d 203, 2003 D.C. App. LEXIS 432 (2003).

Accrual of a cause of action is determined on a case-by-case basis. In *re Estate of Green*, 816 A.2d 14, 2003 D.C. App. LEXIS 20 (2003), remanded by 896 A.2d 250, 2006 D.C. App. LEXIS 152 (D.C. 2006).

As a general rule, an action accrues and the statute of limitations begins to run when the suit could first be initiated. In *re Estate of Green*, 816 A.2d 14, 2003 D.C. App. LEXIS 20 (2003), remanded by 896 A.2d 250, 2006 D.C. App. LEXIS 152 (D.C. 2006).

"Inquiry notice," which causes the claim to accrue for limitations purposes, is that notice which a plaintiff would have possessed after due investigation. *Doe v. Medlantic Health Care Group, Inc.*, 814 A.2d 939, 2003 D.C. App. LEXIS 2 (2003).

The critical question in assessing the existence of inquiry notice, which causes the claim to accrue for limitations purposes, is whether the plaintiff exercised reasonable diligence under the circumstances in acting or failing to act on whatever information was available to him. *Doe v. Medlantic Health Care Group, Inc.*, 814 A.2d 939, 2003 D.C. App. LEXIS 2 (2003).

The relevant circumstances in assessing the existence of inquiry notice, which causes the claim to accrue for limitations purposes, include, but are not limited to, the conduct and misrepresentations of the defendant, and the reasonableness of the plaintiff's reliance on the defendant's conduct and misrepresentations. *Doe v. Medlantic Health Care Group, Inc.*, 814 A.2d 939, 2003 D.C. App. LEXIS 2 (2003).

Even where a plaintiff might know, or be deemed to know, of wrongdoing on the part of one defendant, accrual of his action, for limitations purposes, against another, unknown defendant responsible for the same harm is not automatic, unless the two defendants were closely connected, such as in a superior-subordinate relationship. *Doe v. Medlantic Health Care Group, Inc.*, 814 A.2d 939, 2003 D.C. App. LEXIS 2 (2003).

At the latest, a cause of action accrues for limitations purposes when the plaintiff knows or by the exercise of reasonable diligence should know (1) of the injury, (2) its cause in fact, and (3) of some evidence of wrongdoing; under this rule, the plaintiff does not have *carte blanche* to defer legal action indefinitely if she knows or should know that she may have suffered injury and that the defendant may have caused her harm. *Beard v. Edmondson &*

Gallagher, 790 A.2d 541, 2002 D.C. App. LEXIS 15 (2002).

All damages need not be sustained, or even identified, for the cause of action to accrue; any appreciable and actual harm flowing from the defendant's conduct is sufficient. *Beard v. Edmondson & Gallagher*, 790 A.2d 541, 2002 D.C. App. LEXIS 15 (2002).

As a general rule, where the fact of an injury can be readily determined, a claim accrues for purposes of the statute of limitations at the time the injury actually occurs. *Mullin v. Wash. Free Weekly Inc.*, 785 A.2d 296, 2001 D.C. App. LEXIS 233 (2001).

When the relationship between the fact of injury and alleged tortious conduct is obscure, a court determines when the claim accrues through application of the discovery rule, and the statute of limitations will not run until plaintiffs know or reasonably should have known that they suffered injury due to the defendants' wrongdoing. *Mullin v. Wash. Free Weekly Inc.*, 785 A.2d 296, 2001 D.C. App. LEXIS 233 (2001).

Generally, the cause of action accrues, and the statute of limitations begins to run, at the time of the occurrence of a judicially recognizable injury or event constituting a breach of duty; the statute commences at that time even though the plaintiff is unaware of the accrual of his or her cause of action. *Mullin v. Wash. Free Weekly Inc.*, 785 A.2d 296, 2001 D.C. App. LEXIS 233 (2001).

In general, an actionable claim accrues, and the statute of limitations begins to run, when a suit thereon could first be maintained to a successful conclusion. *Bembery v. District of Columbia*, 758 A.2d 518, 2000 D.C. App. LEXIS 216 (2000).

Cause of action is generally said to accrue at the time the injury occurs. *Morton v. National Med. Enters.*, 725 A.2d 462, 1999 D.C. App. LEXIS 21 (1999).

Plaintiff can be charged with inquiry notice of his claims, for statute of limitations purposes, even if he is not actually aware of each essential element of his cause of action. *Cevenini v. Archbishop of Washington*, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Under both general rule of claim accrual and discovery rule exception, statute of limitations begins to run when plaintiff either has actual knowledge of cause of action or is charged with knowledge of that cause of action. *Cevenini v. Archbishop of Washington*, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Where fact of injury can be readily determined, claim accrues at time that plaintiff suffers alleged injury. *Hendel v. World Plan Exec. Council*, 705 A.2d 656, 1997 D.C. App. LEXIS 290 (1997).

It is not necessary that all or even the greater part of damages occur before right of action

arises; any appreciable and actual harm flowing from defendant's conduct is sufficient. *Hendel v. World Plan Exec. Council*, 705 A.2d 656, 1997 D.C. App. LEXIS 290 (1997).

Discovery rule does not give plaintiff *carte blanche* to defer legal action indefinitely if she knows or should know that she may have suffered injury and that defendant may have caused her harm. *Hendel v. World Plan Exec. Council*, 705 A.2d 656, 1997 D.C. App. LEXIS 290 (1997).

Right of action may accrue before plaintiff becomes aware of all of relevant facts. *Hendel v. World Plan Exec. Council*, 705 A.2d 656, 1997 D.C. App. LEXIS 290 (1997).

Law of limitations requires only that plaintiff have inquiry notice of existence of cause of action. *Hendel v. World Plan Exec. Council*, 705 A.2d 656, 1997 D.C. App. LEXIS 290 (1997).

Where fact of injury can be readily determined, claim accrues at time that plaintiff suffers alleged injury. *Hendel v. World Plan Exec. Council*, 705 A.2d 656, 1997 D.C. App. LEXIS 290 (1997).

It is not necessary that all or even the greater part of damages occur before right of action arises; any appreciable and actual harm flowing from defendant's conduct is sufficient. *Hendel v. World Plan Exec. Council*, 705 A.2d 656, 1997 D.C. App. LEXIS 290 (1997).

If existence of injury is not readily apparent, claim does not accrue until plaintiff, exercising due diligence, has discovered or reasonably should have discovered all essential elements of her possible cause of action, such as duty, breach, causation and damages. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Under discovery rule, determination as to when claim accrues has been guided by considerations of basic fairness; legislature should not be presumed to have intended to deny day in court to plaintiff who did not know, and could not reasonably have known, of her injury at time that it occurred, provided that she filed suit in timely fashion after she learned or should have learned the facts. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Discovery rule was developed to redress situations in which fact of injury was not readily apparent and indeed might not become apparent for several years after incident causing injury had occurred; claimant should not be penalized because he has had complicating misfortune of not realizing that he has in fact been victimized by tort-feasor. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Generally, statute of limitations begins to run at time that right to maintain action accrues, in other words, from time that all elements of cause of action have come into exis-

tence. *John Doe v. District of Columbia Com. on Human Rights*, 624 A.2d 440, 1993 D.C. App. LEXIS 93 (1993).

As general rule, action accrues and statute of limitations begins to run when suit could first be initiated. *Kerns v. Ameriprint, Inc.*, 621 A.2d 381, 1993 D.C. App. LEXIS 48 (1993).

Statute of limitations begins to run when facts which form basis of claim are discovered, or reasonably should have been discovered, in exercise of due diligence. *Interdonato v. Interdonato*, 521 A.2d 1124, 1987 D.C. App. LEXIS 292 (1987).

Statutes of limitations are based on policies of protecting notice and securing ultimate peace between adversaries without unjustly barring claims; this is the basis for the general rule that a statute of limitations begins to run only from the time the right to maintain the action accrues, that is, from the time that all elements of the cause of action exist. D.C. Code § 12-301. *S. Freedman & Sons, Inc. v. Hartford Fire Ins. Co.*, 396 A.2d 195, 1978 D.C. App. LEXIS 588 (1978).

As a general rule, an actionable claim accrues, and statute of limitations begins to run, when a suit thereon could first be maintained to a successful conclusion. D.C. Code § 12-301. *Toomey v. Cammack*, 345 A.2d 453, 1975 D.C. App. LEXIS 254 (1975).

Plaintiff's cause of action against corporation's "alter ego" accrued when injurious actions allegedly occurred, not when court ruling in unrelated case held that defendant was corporation's alter ego. *Huntsman v. Park*, 112 WLR 657 (Super. Ct. 1984).

— Injuries to person, accrual of right of action or defense.

Under District of Columbia law, intentional infliction of emotional distress claim was time barred, where it was not filed within one year of act of battery on which it was premised. *Rendall-Speranza v. Nassim*, 107 F.3d 913, 1997 U.S. App. LEXIS 4720 (C.A.D.C. 1997).

Action against landlord's contractor for injuries sustained by tenant due to contractor's allegedly faulty repair of stairway railing was based on negligence, founded in tort, and cause of action did not accrue, for limitations purposes, until injury resulted. D.C. Code 1951, § 12-201. *Hanna v. Fletcher*, 231 F.2d 469, 1956 U.S. App. LEXIS 3414 (C.A.D.C. 1956).

Claims for intentional and negligent infliction of emotional distress that were asserted by arrestee and his wife were intertwined with malicious prosecution claim and thus were timely under District of Columbia law, inasmuch as claims were brought within one year after final charge against arrestee was dropped, which was within limitations period for malicious prosecution claim. *Parker v.*

Grand Hyatt Hotel, 124 F.Supp.2d 79, 2000 U.S. Dist. LEXIS 17024 (2000).

Three year statute of limitations on police officer's intentional infliction of emotional distress claim under District of Columbia law against two police officers began to run on last date of allegedly injurious conduct. D.C. Code 1981, § 12-301(8). *Cooke-Seals v. District of Columbia*, 973 F. Supp. 184, 1997 U.S. Dist. LEXIS 11110 (1997).

District of Columbia's one-year statute of limitations applicable to libel and assault claims precluded antinuclear demonstrators from bringing action against newspaper defendants for conspiracy to libel and assault demonstrators more than one year after publication of last allegedly defamatory publication. D.C. Code 1981, § 12-301(4). *Thomas v. News World Communications*, 681 F. Supp. 55, 1988 U.S. Dist. LEXIS 1308 (1988), dismissed by 696 F. Supp. 702, 1988 U.S. Dist. LEXIS 10516 (D.D.C. 1988).

One-year limitations period applicable to arrestee's claims against District of Columbia and police officers for common-law assault and battery, false arrest and false imprisonment began to run at time of arrestee's alleged injury, rather than date arrestee gave statutorily required written notice to District of Columbia. D.C. Code 1981, §§ 12-301(4), 12-309. *Williams v. District of Columbia*, 676 F. Supp. 329, 1987 U.S. Dist. LEXIS 12575 (1987).

For purpose of statute of limitations, the benefit of tolling a medical malpractice claim under the discovery rule ends, or perhaps more accurately is eclipsed, once a plaintiff is on inquiry notice as to all defendants. *Berkow v. Hayes*, 841 A.2d 776, 2004 D.C. App. LEXIS 41 (2004).

Cause of action for medical malpractice accrued, and three-year limitations period began to run, under inquiry notice rule, against physicians who mistakenly concurred in pathologist's misdiagnosis, and cardiologist whose diagnostic failure allowed malignancy to grow substantially before pathologist discovered it, albeit inaccurately, when patient first learned that pathologist misdiagnosed patient's condition. *Berkow v. Hayes*, 841 A.2d 776, 2004 D.C. App. LEXIS 41 (2004).

Proof of the injured party's knowledge of some wrongdoing on the part of the physician is required before it can be said that the period of limitations commenced on his or her cause of action for medical malpractice. *Hardi v. Mezzanotte*, 818 A.2d 974, 2003 D.C. App. LEXIS 140 (2003).

Sisters' suit against brother, seeking damages for sexual abuse allegedly perpetrated upon sisters by brother during their childhood and youth 20 to 40 years earlier, was not time barred, but rather, if, as result of brother's wrongful conduct, either sisters' recollection of

relevant events had been repressed, and if she had thus been effectively precluded during period of repression from seeking legal redress, then that sister's right of action did not accrue until date that she recovered her memory of wrongful conduct. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Where plaintiff has alleged total repression of any recollection of sexual abuse which allegedly occurred during her childhood, her claim does not accrue until date that she recovered her memory to extent that she knows, or reasonably should know, of some injury, its cause, and related wrongdoing, and if defendant disputes repression, or date on which plaintiff recovered her memory, then issue must be determined by trier of fact, and cannot be resolved on motion to dismiss complaint. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Court of Appeals could determine application of discovery rule to repressed memory sexual abuse cases, despite defendant's contention that question was one of policy to be made by legislature, since, in absence of clarifying legislation, it was Court's obligation to construe word "accrues" in existing statute of limitations, and Court could not defer performance of its judicial duty until enactment of new law, an event which might or might not occur. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Statute of limitations for maintaining personal injury action under pre-1986 version of compulsory No-Fault Motor Vehicle Insurance Act began to run when injured party had incurred over \$5,000 in medical payments. D.C. Code 1981, § 12-301(8). *Jameson v. King*, 571 A.2d 216, 1990 D.C. App. LEXIS 47 (1990).

— Injury to property, accrual of right of action or defense.

Former securities broker's intentional interference with business relations claim, regarding allegedly baseless claims against him, accrued for limitations purposes no later than date on which district business conduct committee (DBCC) issued complaint against him. D.C. Code 1981, § 12-301(8). *Zandford v. NASD*, 30 F.Supp.2d 1, 1998 U.S. Dist. LEXIS 21922 (1998), affirmed by 221 F.3d 197, 343 U.S. App. D.C. 52, 2000 U.S. App. LEXIS 3741 (2000).

Date that secured party foreclosed on stock securing loan from her to shareholder was date that conversion claim accrued under District of Columbia law. D.C. Code 1981, § 12-301(2). *Riddell v. Riddell Washington Corp.*, 680 F. Supp. 4, 1987 U.S. Dist. LEXIS 13058 (1987), affirmed in part and reversed in part by 866 F.2d 1480, 275 U.S. App. D.C. 362, 1989 U.S.

App. LEXIS 1267, 8 U.C.C. Rep. Serv. 2d (CBC) 575 (1989).

Date that secured party foreclosed on stock was date that wrongful transfer action accrued and that three-year District of Columbia statute of limitations began to run for wrongful transfer of stock to family-owned corporations. D.C. Code 1981, § 12-301(2, 8). Riddell v. Riddell Washington Corp., 680 F. Supp. 4, 1987 U.S. Dist. LEXIS 13058 (1987), affirmed in part and reversed in part by 866 F.2d 1480, 275 U.S. App. D.C. 362, 1989 U.S. App. LEXIS 1267, 8 U.C.C. Rep. Serv. 2d (CBC) 575 (1989).

Where plaintiff suffered injury, if at all, on date that certificate for allegedly overissued stock was issued to him in payment for services, since approximately four years had elapsed between such alleged injury and commencement of action, plaintiff's claim for negligence was barred by District of Columbia three-year statute of limitations. D.C. Code § 12-301. Carmichael v. Egan, 433 F. Supp. 465, 1977 U.S. Dist. LEXIS 15696 (1977), reversed by 584 F.2d 558, 189 U.S. App. D.C. 400 (1978).

Date on which property owner's claim ripened under the discovery rule was not jury question in suit against Water and Sewer Authority (WASA) for delivering corrosive water and causing pinhole leaks in, and damaging, the pipes and other plastic fixtures in buildings. Cormier v. D.C. Water & Sewer Auth., 959 A.2d 658, 2008 D.C. App. LEXIS 431 (2008).

Three-year statute of limitations applicable to property owner's suit against Water and Sewer Authority (WASA) for delivering corrosive water and causing pinhole leaks in, and damaging, the pipes and other plastic fixtures in buildings began to run by the time he wrote his accusatory letters, not when expert gave opinion on the connection between the pipe problem and the water, more than two months after owner filed his lawsuit; when landowner wrote his letters, he indisputably knew or should have known about the cause. Cormier v. D.C. Water & Sewer Auth., 959 A.2d 658, 2008 D.C. App. LEXIS 431 (2008).

Any injury to lessor's property and premises resulting from lack of supervision by lessee of its employees, agents and invitees must have occurred on or prior to date lessee vacated premises, and thus statute of limitations commenced to run no later than date on which lessee vacated premises. Shehyn v. District of Columbia, 392 A.2d 1008, 1978 D.C. App. LEXIS 326 (1978).

Cause of action for trespass usually accrues at time of original encroachment. L'Enfant Plaza East, Inc. v. John McShain, Inc., 359 A.2d 5, 1976 D.C. App. LEXIS 295 (1976).

Cause of action for permanent structural encroachment accrues at time trespass occurs.

L'Enfant Plaza East, Inc. v. John McShain, Inc., 359 A.2d 5, 1976 D.C. App. LEXIS 295 (1976).

Statute of limitations runs against motorist's claim for damages sustained in collision, from date of collision. Bair v. Bryant, 96 A.2d 508, 1953 D.C. App. LEXIS 133 (Cr.App. 1953).

— Instruments for payment of money, accrual of right of action or defense.

Claim of trustees of estate against former administrator for failure to collect notes accrued not later than March 7, 1940, when maker of notes pleaded statute of limitations in defense of trustees' suit against him and not on October 26, 1942, when it was finally adjudicated that statute had run in maker's favor, and therefore trustees' suit against former administrator instituted on March 23, 1944, was barred by three-year statute of limitations. D.C. Code 1940, § 12-201. Noel v. National Sav. & Trust Co., 158 F.2d 410, 1946 U.S. App. LEXIS 2412 (1946).

An action for money which had been delivered by plaintiffs to defendant as a loan payable on demand, which action was commenced more than three years after loan was made but within three years of demand, was barred by three-year statute of limitations, since the money became due at once and limitations ran from date of the loan. D.C. Code 1940, § 12-201. Schupp v. Taendler, 154 F.2d 849, 1946 U.S. App. LEXIS 2121 (1946).

Home mortgagors and mortgagee, as signers of settlement agreement in mortgage foreclosure action, did not adopt the seal of the notaries public as their own, as would make the agreement an instrument under seal, so that 12-year limitations period for action brought on instrument under seal would be applicable, in mortgagors' action alleging that mortgagee breached the agreement by failing to advise credit reporting agencies that the foreclosure action had been mistakenly initiated; mortgagors' signatures were affixed before notary seals were placed on the document, the language above the notary stamps merely certified that mortgagors each signed the agreement in front of a notary public, without suggesting anything further, and it was unclear whether the mortgagee had signed the agreement after, rather than before, the mortgagors had signed the agreement and the notary seals had been placed on the document. Murray v. Wells Fargo Home Mortg., 953 A.2d 308, 2008 D.C. App. LEXIS 296 (2008).

When the instrument is made by an individual, the word "seal" next to the signature is, standing alone, sufficient to create a sealed instrument entitled to the 12-year statute of limitations for an action brought on an instrument under seal. Murray v. Wells Fargo Home Mortg., 953 A.2d 308, 2008 D.C. App. LEXIS 296 (2008).

Settlement agreement in mortgage foreclosure action was not an instrument under seal, and thus, 12-year limitations period for action brought on instrument under seal was inapplicable, in home mortgagors' action alleging that mortgagee breached the agreement by failing to advise credit reporting agencies that the foreclosure action had been mistakenly initiated; top of signature page for one mortgagor merely contained a recitation that "IN WITNESS WHEREOF, we have hereunto set our hands and seal," the word "seal" did not appear next to signatures of either mortgagor, and the settlement agreement, as presented to the court in mortgagors' action alleging breach of the agreement, did not contain the signature of any representative of mortgagee and did not contain a seal on behalf of mortgagee. *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 2008 D.C. App. LEXIS 296 (2008).

Twelve-year statute of limitations for action on instrument under seal did not apply to suit by the District of Columbia Water and Sewer Authority (WASA) for breach of contract with the word "seal" only on the signature page; no seal was placed anywhere on the contract or signature page, the signatures were not notarized, and the word "seal" did not appear next to any signatures. *D.C. Water & Sewer Auth. v. Delon Hampton & Assocs.*, 851 A.2d 410, 2004 D.C. App. LEXIS 268 (2004).

— Insurance contracts, accrual of right of action or defense.

Applicable three-year statute of limitations on ERISA benefits claim by District of Columbia attorney formerly employed full-time with association began to run on date she first executed independent contractor agreement with association so she could work part-time; independent contractor agreement clearly communicated to attorney that she was ineligible to receive benefits under association's retirement plans. *Walker v. Pharm. Research & Mfrs. of Am.*, 439 F.Supp.2d 103, 2006 U.S. Dist. LEXIS 47982 (2006).

Insured railroad's claims against excess liability insurers for indemnity and breach of contract did not accrue until railroad made first payment of \$16,100,000 in partial satisfaction of judgment entered against it in underlying personal injury action when policies dictated that insurers were not obligated to indemnify railroad unless and until it made payment in excess of \$10,000,000, and therefore claims were not barred by District of Columbia's three-year statute of limitations for contract actions. *AMTRAK v. Lexington Ins. Co.*, 357 F.Supp.2d 287, 2005 U.S. Dist. LEXIS 2282 (2005).

Under District of Columbia law, suit by survivors of automobile crash, seeking declaration of coverage against insurer of restaurant that allegedly served alcoholic beverages to intoxi-

cated driver who struck survivors' vehicle, accrued, for limitations purposes, when insurer denied coverage. *Saylab v. Harford Mut. Ins. Co.*, 271 F.Supp.2d 112, 2003 U.S. Dist. LEXIS 17072 (2003), dismissed in part by 332 F. Supp. 2d 134, 2004 U.S. Dist. LEXIS 16783 (D.D.C. 2004).

In action brought by insurer against insured's former employee to recover amount of payment it made to insured under commercial fidelity policy for loss sustained by insured as result of false or dishonest acts of insured's former employee, insurer stood in shoes of insured, took no rights other than those insured had, and was subject to all defenses which employee could have asserted against insured including statute of limitation; therefore, trial court did not err in dismissing insurer's action which was filed more than three years after date when employee was dismissed from employment upon his arrest. D.C. Code § 12-301(2). *Aetna Casualty & Surety Co. v. Windsor*, 353 A.2d 684, 1976 D.C. App. LEXIS 487 (1976).

Action which was brought by beneficiary of group life policy to recover double indemnity accidental death benefits more than three years after insurer had refused claim for double indemnity benefits was precluded by applicable three-year statute of limitations. D.C. Code § 12-301(7). *Dillard v. Travelers Ins. Co.*, 298 A.2d 222, 1972 D.C. App. LEXIS 305 (1972).

Where beneficiary of group life policy who sought to recover double indemnity benefits for accidental death of insured had submitted her claim to insured's employer and subsequently received payment of ordinary life benefits through employer, beneficiary had made employer her agent for claim and for payment or rejection purposes; thus, notification of rejection of claim for double indemnity benefits to insured's former employer was sufficient to commence running of limitations period against beneficiary's claim for double indemnity benefits. D.C. Code § 12-301(7). *Dillard v. Travelers Ins. Co.*, 298 A.2d 222, 1972 D.C. App. LEXIS 305 (1972).

— Labor and employment claims, accrual of right of action or defense.

Decision by university board of trustees in 1985 directing personnel committee to make "retroactive decision" evaluating associate professor's qualifications for full professorship as of 1978 when promotion was initially denied did not avoid three-year contract statute of limitations with regard to breach of contract claims as to which professor had notice at least by time he received letter in April 79 informing him that he had once again been denied promotion. D.C. Code 1981, § 12-301(7). *Kyriakopoulos v. George Washington Univer-*

sity, 866 F.2d 438, 1989 U.S. App. LEXIS 279 (C.A.D.C. 1989).

Even though associate professor's breach of contract claims against university arising from initial denial of promotion to full professorship were barred by three-year District of Columbia limitations period for actions on contract, alleged consideration of improper factors in grievance proceeding with regard to professor's challenge to denial of promotion was claim for separate breach of continuing contractual duty, triggering its own limitations period. D.C. Code 1981, § 12-301(7). *Kyriakopoulos v. George Washington University*, 866 F.2d 438, 1989 U.S. App. LEXIS 279 (C.A.D.C. 1989).

Claims by African-American members and officers of District of Columbia Fire and Emergency Medical Services (DCFEMS) appropriately arose under Civil Rights Act of 1991 where they alleged that District "interfered with the performance of an existing contract [and] denied the plaintiffs the benefits of their contract with the city," causing "a sever [sic] loss of pay and prestige," and fact they had to enforce their § 1981 claims through remedy outlined in § 1983 did not change effective statute of limitations period for cause of action from four to three years. *Hamilton v. District of Columbia*, 852 F.Supp.2d 139, 2012 U.S. Dist. LEXIS 47808 (2012).

District of Columbia's lulling doctrine applied to equitably toll the limitations periods, in former domestic employee's claims against former employers for unjust enrichment, breach of contract, and intentional infliction of emotional distress (IED), until date that employee first contacted and began cooperating with FBI in criminal investigation against employers for human trafficking, where employee alleged that employers lulled her into inaction by exploiting her limited knowledge of English, misleading her about her rights under state law, confiscating her passport, and keeping her in isolation. *Kiwanuka v. Bakilana*, 844 F.Supp.2d 107, 2012 U.S. Dist. LEXIS 23093 (2012).

Causes of action for claims for breaches of contract and fiduciary duty, brought by former employee of non-profit public interest government watchdog organization arising from its claims that outside general counsel of organization and general counsel's law firm improperly disclosed information related to employee's divorce in previous litigation accrued, and three-year limitations period began to run, when alleged disclosures occurred in prior litigation. *Klayman v. Barmak*, 634 F.Supp.2d 56, 2009 U.S. Dist. LEXIS 60048 (2009).

Under District of Columbia law, fact that arbitration of District of Columbia correctional officer's wrongful termination claim was still pending precluded officer from filing court action alleging such claim, on grounds that she failed to exhaust her administrative remedies

under District of Columbia Comprehensive Merit Personnel Act (CMPA). *Johnson v. District of Columbia*, 368 F.Supp.2d 30, 2005 U.S. Dist. LEXIS 4310 (2005).

District of Columbia three-year statute of limitations on federal employee's claims arising out of her discharge from Department of the Treasury began to run when she was discharged. D.C. Code 1981, § 12-301(8). *Mittleman v. United States*, 997 F. Supp. 1, 1998 U.S. Dist. LEXIS 2579 (1998), affirmed by 1998 U.S. App. LEXIS 28527 (D.C. Cir. Oct. 15, 1998), affirmed by 1998 U.S. App. LEXIS 28549 (D.C. Cir. Oct. 15, 1998).

Former federal employee's wrongful discharge and related claims accrued when she was fired from Department of Treasury in late 1980 or early 1981, and thus, her 1986 complaint did not comply with any conceivable District of Columbia statute of limitations. D.C. Code 1981, § 12-301. *Mittleman v. United States*, 997 F. Supp. 1, 1998 U.S. Dist. LEXIS 2579 (1998), affirmed by 1998 U.S. App. LEXIS 28527 (D.C. Cir. Oct. 15, 1998), affirmed by 1998 U.S. App. LEXIS 28549 (D.C. Cir. Oct. 15, 1998).

Under District of Columbia law, statute of limitations governing claims against employer for fraud and breach of employment agreement did not begin to run until 30 days after employee submitted resignation letter, when resignation became effective, and not on date employer refused to negotiate royalty agreement and employee submitted letter; if employer's refusal to negotiate royalty agreement was anticipatory breach, employee acted in commercially reasonable manner in waiting 30 days before making resignation effective. D.C. Code 1981, §§ 12-301(7, 8), 28:2-610(a). *Computer Data Systems, Inc. v. Kleinberg*, 759 F. Supp. 10, 1990 U.S. Dist. LEXIS 18944 (1990).

Under District of Columbia law and specific terms of employment agreement, limitations period governing claims against employer for fraud and breach of employment agreement began to run 30 days after employee tendered resignation; agreement provided that party seeking to terminate relationship had to give at least 30 days' written notice. D.C. Code 1981, § 12-301(7, 8). *Computer Data Systems, Inc. v. Kleinberg*, 759 F. Supp. 10, 1990 U.S. Dist. LEXIS 18944 (1990).

Statute of limitation began to run on unjust enrichment claim brought by proposer of magazine idea against newspaper at the time proposer's last service was rendered to newspaper and compensation was wrongfully withheld; by that time she had done a significant amount of work on behalf of, and induced by, the newspaper regarding proposed magazine and the newspaper informed her she would not be compensated. *News World Communs., Inc. v.*

Thompson, 878 A.2d 1218, 2005 D.C. App. LEXIS 380 (2005).

A claim for unjust enrichment only accrues when the enrichment becomes unjust; the statute of limitations starts to run upon the occurrence of the wrongful act giving rise to a duty of restitution. *News World Communs., Inc. v. Thompson*, 878 A.2d 1218, 2005 D.C. App. LEXIS 380 (2005).

The cause of action for unjust enrichment accrues upon presentment and subsequent rejection of a bill for services, or as soon as the services were rendered. *News World Communs., Inc. v. Thompson*, 878 A.2d 1218, 2005 D.C. App. LEXIS 380 (2005).

Employee's hostile work environment claim brought under the District of Columbia Human Rights Act (DCHRA) was timely filed because employee's testimony demonstrated that supervisor's sexually improper behavior occurred within one year of when he filed his claim, and thus, employee's claim was not barred by DCHRA's one-year statute of limitations. *Psychiatric Inst. v. D.C. Comm'n on Human Rights*, 871 A.2d 1146, 2005 D.C. App. LEXIS 143 (2005).

A hostile work environment claim, by its very nature, involves repeated conduct based on the cumulative effect of individual acts, and thus, to satisfy statute of limitations, only one act contributing to the claim need occur within the statutory period. *Psychiatric Inst. v. D.C. Comm'n on Human Rights*, 871 A.2d 1146, 2005 D.C. App. LEXIS 143 (2005).

One-year statute of limitations period for former employee's action for discriminatory and retaliatory discharge began to run at the time employee was terminated, where employee testified that her own immediate conclusion after being discharged was that her termination was discriminatory. *Brown v. NAS*, 844 A.2d 1113, 2004 D.C. App. LEXIS 71 (2004).

Mere continuity of employment, without more, is insufficient to prolong the life of a cause of action for employment discrimination. *Brown v. NAS*, 844 A.2d 1113, 2004 D.C. App. LEXIS 71 (2004).

Employee's cause of action for wrongful termination accrued on date that he was notified that his employment would end, rather than on last day of his employment; at time employee received notice, there was nothing to suggest that employer's decision was tentative or otherwise subject to change. *Stephenson v. ADA*, 789 A.2d 1248, 2002 D.C. App. LEXIS 6 (2002).

Breach of employment contract claim brought by professor/physician, after it was determined that suspension from university hospital clinical service and medical school faculty was unjustified, was barred by statute of limitations when not brought within three years of either suspension, notwithstanding contention that there had been "continuing"

breach of contract. *Press v. Howard University*, 540 A.2d 733, 1988 D.C. App. LEXIS 79 (1988).

District of Columbia school teacher's cause of action arising out of disputed salary placement arose, at the latest, on May 1, 1967, on affirmation by chief examiner of her salary placement, and thus suit on original claim which was not filed until September 11, 1972, was barred by three-year statute of limitations. D.C. Code § 12-301. *Clark v. Scott*, 329 A.2d 442, 1974 D.C. App. LEXIS 325 (1974).

— Landlord and tenant, accrual of right of action or defense.

Three-year statute of limitations began to run on lessor's claim against the District of Columbia, for breach of overtime charge provision of lease of two townhouses, when the District received successive monthly bills for extra rent, rather than 15 months later when lessor received District's letter expressly rejecting overtime charges. *Bembery v. District of Columbia*, 758 A.2d 518, 2000 D.C. App. LEXIS 216 (2000).

Not only will statute of limitations not run against right of owner to recover possession of premises in favor of tenant at sufferance, where tenant holds over, there is implied continuation of all terms of previous agreement, including covenants to maintain. D.C. Code 1981, § 12-301(1). *Estate of Wells v. Estate of Smith*, 576 A.2d 707, 1990 D.C. App. LEXIS 140 (1990).

Where release of keys by lessee to lessor and lessor's acceptance could not be deemed conclusively to have constituted modification of lease as to term of tenancy, and lessor did not take possession of premises so as to prevent reentry by lessee, lessee's vacation of premises prior to date on which month-to-month tenancy was to terminate did not extinguish lessee's right to enter premises prior to expiration of leasehold, nor did lessee's vacation of premises constitute anticipatory breach of duty to restore premises to original condition, and thus statute of limitations did not commence to run until date of expiration of leasehold for purposes of action for breach of duty to restore premises to original condition. D.C. Code § 12-301(3, 7, 8). *Shehyn v. District of Columbia*, 392 A.2d 1008, 1978 D.C. App. LEXIS 326 (1978).

— Legal malpractice, accrual of right of action or defense.

In determining when a legal malpractice claim accrues, the District of Columbia follows so-called injury rule under which claim for legal malpractice accrues when plaintiff-client suffers actual injury and not when act causing injury occurs. D.C. Code 1981, § 12-301. *Byers v. Burleson*, 713 F.2d 856, 1983 U.S. App. LEXIS 25170 (C.A.D.C. 1983).

Action against attorney for breach of duty in performing services or for negligence arises at

time when breach or negligence is discovered or when actual damage results. D.C. Code § 12-301. *Ft. Myers Seafood Packers, Inc. v. Steptoe & Johnson*, 381 F.2d 261, 1967 U.S. App. LEXIS 5944 (C.A.D.C. 1967), writ of certiorari denied by 390 U.S. 946, 88 S. Ct. 1033, 19 L. Ed. 2d 1135, 1968 U.S. LEXIS 2337 (1968).

Statute of limitations with respect to action against attorneys for alleged malpractice commenced to run on date of impounding of plaintiff's boats allegedly due to failure of attorneys to ascertain whether such boats could lawfully fish in Venezuelan waters and action filed within three years of date of impounding was not barred by three-year statute of limitations. D.C. Code § 12-301. *Ft. Myers Seafood Packers, Inc. v. Steptoe & Johnson*, 381 F.2d 261, 1967 U.S. App. LEXIS 5944 (C.A.D.C. 1967), writ of certiorari denied by 390 U.S. 946, 88 S. Ct. 1033, 19 L. Ed. 2d 1135, 1968 U.S. LEXIS 2337 (1968).

Action against attorneys for alleged malpractice which was filed within three years of impounding of plaintiff's boats allegedly due to failure of defendant to ascertain whether such boats could lawfully fish in Venezuelan waters was timely whether or not attorneys' advice had previously caused other damage. D.C. Code § 12-301. *Ft. Myers Seafood Packers, Inc. v. Steptoe & Johnson*, 381 F.2d 261, 1967 U.S. App. LEXIS 5944 (C.A.D.C. 1967), writ of certiorari denied by 390 U.S. 946, 88 S. Ct. 1033, 19 L. Ed. 2d 1135, 1968 U.S. LEXIS 2337 (1968).

In the District of Columbia, the statute of limitations for a legal malpractice claim is three years. *De May v. Moore & Bruce, LLP*, 584 F.Supp.2d 170, 2008 U.S. Dist. LEXIS 97064 (2008).

Cause of action for legal malpractice accrued, and three-year statute of limitations under District of Columbia law began to run, when client's application to change his immigration status was denied and he chose to retain new counsel. *Mawalla v. Hoffman*, 569 F.Supp.2d 253, 2008 U.S. Dist. LEXIS 60774 (2008).

Under District of Columbia law, the continuous representation rule did not apply to toll the three-year statute of limitations on client's claim alleging that law firm and attorneys committed malpractice when they failed to advise him that his federal workers' compensation had been calculated incorrectly; particular matter in issue, client's application to Department of Labor's Office of Workers' Compensation Programs (OWCP) for benefits, ended when OWCP informed client that its ruling was final and appealable, and client did not have contact with firm or attorneys for some 25 years afterwards. *Gallucci v. Schaffer*, 507 F.Supp.2d 85, 2007 U.S. Dist. LEXIS 63050 (2007), affirmed by 2008 U.S. App. LEXIS 3235 (D.C. Cir. Feb. 11, 2008).

Under District of Columbia law, three-year statute of limitations for client's action against law firm and attorneys, alleging that they committed malpractice when they failed to advise him that his workers' compensation for injury sustained while an apprentice at the Bureau of Engraving and Printing had been calculated incorrectly, began to run no later than date on which client, through a representative, sent a letter to the Department of Labor's Office of Workers' Compensation Programs (OWCP) seeking increased rate of compensation. *Gallucci v. Schaffer*, 507 F.Supp.2d 85, 2007 U.S. Dist. LEXIS 63050 (2007), affirmed by 2008 U.S. App. LEXIS 3235 (D.C. Cir. Feb. 11, 2008).

Claim that attorney was negligent for not accepting settlement offered to former client accrued when settlement was rejected four years prior to former client's action, and thus was barred under District of Columbia's three-year statute of limitations. *Nwachukwu v. Karl*, 223 F.Supp.2d 60, 2002 U.S. Dist. LEXIS 16384 (2002).

District of Columbia three-year statute of limitations for fraud, breach of fiduciary duty, and other claims barred vendors' action against real estate professionals and attorneys for alleged fraud, negligence, and breach of fiduciary duties where action was filed more than three years after accrual of action when property was foreclosed on. D.C. Code 1981, § 12-301. *Farmer v. Mt. Vernon Realty, Inc.*, 720 F. Supp. 223, 1989 U.S. Dist. LEXIS 11534 (1989), affirmed without opinion by 983 F.2d 298, 299 U.S. App. D.C. 273, 1993 U.S. App. LEXIS 5074 (1993).

Legal malpractice claims in District of Columbia may not be brought more than three years from time the right to maintain the action accrues; under foregoing rule, such claim "accrues" when plaintiff client suffers actual injury. D.C. Code § 12-301. *Hunt v. Bittman*, 482 F. Supp. 1017, 1980 U.S. Dist. LEXIS 9795 (1980), affirmed without opinion by 652 F.2d 196, 209 U.S. App. D.C. 203 (1981).

Legal malpractice claim of convicted Water-gate conspirator accrued no later than date on which he was sentenced and immediately incarcerated upon his guilty plea; thus, malpractice claim was barred by three-year statute of limitations. D.C. Code § 12-301. *Hunt v. Bittman*, 482 F. Supp. 1017, 1980 U.S. Dist. LEXIS 9795 (1980), affirmed without opinion by 652 F.2d 196, 209 U.S. App. D.C. 203 (1981).

Client's legal malpractice claim against attorney, relating to dismissal, as time-barred under insurance contract, of her underlying action against long-term-disability (LTD) insurer which had denied her claim for LTD benefits, accrued, for limitations purposes, at the latest when client knew that she had been injured, by attorney's conduct in allowing con-

tractual deadline to expire without filing suit, through dismissal of underlying action, so that the discovery rule no longer delayed the accrual of the malpractice claim, and when she replaced the attorney with new counsel, so that the continuous representation rule no longer delayed the accrual of the malpractice claim. *Bleck v. Power*, 955 A.2d 712, 2008 D.C. App. LEXIS 381 (2008).

Under the continuous representation rule, a client's legal malpractice claim does not accrue, for limitations purposes, until the attorney's representation concerning the particular matter in issue is terminated, even if the client knows before then that her attorney has made an injurious error. *Bleck v. Power*, 955 A.2d 712, 2008 D.C. App. LEXIS 381 (2008).

Under the discovery rule, a plaintiff's right of action in a legal malpractice case does not accrue, for limitations purposes, until the plaintiff has knowledge of, or by the exercise of reasonable diligence should have knowledge of: (1) the existence of the injury; (2) its cause in fact; and (3) some evidence of wrongdoing. *Bleck v. Power*, 955 A.2d 712, 2008 D.C. App. LEXIS 381 (2008).

An action for legal malpractice accrues, for limitations purposes, when the plaintiff has sustained some "injury," which encompasses any loss or impairment of a right, remedy, or interest, or the imposition of a liability. *Bleck v. Power*, 955 A.2d 712, 2008 D.C. App. LEXIS 381 (2008).

At the earliest, an action for legal malpractice accrues, for limitations purposes, when the plaintiff has sustained some injury, even if the injury occurs prior to the time at which the precise amount of damages can be ascertained. *Bleck v. Power*, 955 A.2d 712, 2008 D.C. App. LEXIS 381 (2008).

Cause of action for legal malpractice accrued, and three-year limitations period began to run, when client, as representative of estate, demonstrated knowledge of harm suffered by estate on account of attorney's actions, as spelled out in client's pleadings in lawsuit that had been filed more than three years before the complaint in instant action. *Burtoff v. Faris*, 935 A.2d 1086, 2007 D.C. App. LEXIS 666 (2007).

Client's legal malpractice claim against first attorney who had represented her in underlying medical malpractice action had not yet accrued, for limitations purposes, on the day client terminated attorney's representation because she felt attorney had failed to properly prosecute the medical malpractice claim and had vastly compromised it through inadequate performance, where client had not yet suffered actual injury from the attorney's conduct, and instead had suffered only an uncertain or inchoate injury; the medical malpractice claim had not yet been resolved by trial, settlement, or other means, and client still had hope, how-

ever faint, that matters could be turned around, especially if successor counsel could reopen discovery. *Wagner v. Sellinger*, 847 A.2d 1151, 2004 D.C. App. LEXIS 197 (2004).

Under the "continuous representation rule," a legal malpractice claim will not accrue, for limitations purposes, until the representation is terminated, even though the client's knowledge of an injury might otherwise have triggered the statute of limitations earlier. *Wagner v. Sellinger*, 847 A.2d 1151, 2004 D.C. App. LEXIS 197 (2004).

An action for legal malpractice must be filed no later than three years after the right to maintain the action accrues. D.C. Code 1981, § 12-301(8). *Ray v. Queen*, 747 A.2d 1137, 2000 D.C. App. LEXIS 60 (2000).

Continuous representation rule applies to legal malpractice claims, such that when injury to client may have occurred during period attorney was retained, malpractice claim does not accrue until attorney's representation concerning particular matter in issue is terminated, regardless of when client knows of attorney's alleged error. D.C. Code 1981, § 12-301. *R.D.H. Communs. v. Winston*, 700 A.2d 766, 1997 D.C. App. LEXIS 222 (1997).

Continuous representation rule applies to legal malpractice claims, such that when injury to client may have occurred during period attorney was retained, malpractice claim does not accrue until attorney's representation concerning particular matter in issue is terminated, regardless of when client knows of attorney's alleged error. D.C. Code 1981, § 12-301. *R.D.H. Communs. v. Winston*, 700 A.2d 766, 1997 D.C. App. LEXIS 222 (1997).

Cause of action for legal malpractice normally accrues, for purposes of statute of limitations, on date client suffers actual injury. D.C. Code 1981, § 12-301. *Brown v. Jonz*, 572 A.2d 455, 1990 D.C. App. LEXIS 80 (1990).

Cause of action for legal malpractice in criminal proceeding ordinarily accrues upon date of judgment when sentence is imposed. D.C. Code 1981, § 12-301. *Brown v. Jonz*, 572 A.2d 455, 1990 D.C. App. LEXIS 80 (1990).

Clients' malpractice suit against law firm for failing to timely file clients' claim was barred by applicable three-year limitation period, in that neither date, within applicable period, on which clients' successor attorney informed them that judge had ruled that statute of limitations period had run on part of their claims nor date, within applicable period, on which clients finally settled case for less than they would have absent firm's alleged negligence in handling thereof were date on which clients suffered injury. D.C. Code § 12-301. *Weisberg v. Williams, Connolly & Califano*, 390 A.2d 992, 1978 D.C. App. LEXIS 552 (1978).

Even if District of Columbia Court of Appeals were to adopt "continuous representation rule,"

which provides that when client's injury may have occurred during period attorney was retained, malpractice cause of action does not accrue until attorney's representation concerning particular matter in issue is terminated, clients' malpractice suit against law firm would still be barred by applicable three-year limitation period, where clients brought suit more than five years after firm was granted leave to withdraw as clients' counsel. D.C. Code § 12-301. *Weisberg v. Williams, Connolly & Califano*, 390 A.2d 992, 1978 D.C. App. LEXIS 552 (1978).

— Libel and slander, accrual of right of action or defense.

Under District of Columbia law, defamation occurs, for purposes of one-year limitations period, on publication and the statute of limitations runs from the date of publication. *Di Lella v. Univ. of the Dist. of Columbia David A. Clarke Sch. of Law*, 570 F.Supp.2d 1, 2008 U.S. Dist. LEXIS 59143 (2008), dismissed by 2009 U.S. Dist. LEXIS 90144 (D.D.C. Sept. 30, 2009).

Under District of Columbia law, one-year statute of limitations on law student's defamation claim against school and school officials began to run no later than when dean shared information about student's honor code violation with a representative of another school. *Di Lella v. Univ. of the Dist. of Columbia David A. Clarke Sch. of Law*, 570 F.Supp.2d 1, 2008 U.S. Dist. LEXIS 59143 (2008), dismissed by 2009 U.S. Dist. LEXIS 90144 (D.D.C. Sept. 30, 2009).

Under District of Columbia law, one-year statute of limitations on arrestee's defamation claim against retailer for allegedly providing false information to the police in connection with arrestee's unpaid purchases began to run when retailer made the allegedly defamatory statement to the police department. *Curtis v. Lanier*, 535 F.Supp.2d 89, 2008 U.S. Dist. LEXIS 14914 (2008).

Under District of Columbia law, one-year statute of limitations on arrestee's libel and defamation claim against detective for allegedly lying to obtain an arrest warrant began to run when detective signed the affidavit in support of an arrest warrant, since detective's statements were defamatory on their face. *Curtis v. Lanier*, 535 F.Supp.2d 89, 2008 U.S. Dist. LEXIS 14914 (2008).

Under District of Columbia law, where the alleged statement is defamatory on its face, a plaintiff's reputation is damaged immediately upon publication and one-year statute of limitations begins to run at once. *Curtis v. Lanier*, 535 F.Supp.2d 89, 2008 U.S. Dist. LEXIS 14914 (2008).

Under District of Columbia law, defamation occurs on publication, and the statute of limitations runs from the date of publication. *Nevius v. Afr. Inland Mission Int'l*, 511

F.Supp.2d 114, 2007 U.S. Dist. LEXIS 70084 (2007).

Under District of Columbia law, statute of limitations on missionary's defamation claim against missionary organization began to run on date of publication, when organization's regional supervisor allegedly accused missionary, in presence of others, of mishandling organization funds and negligence in caring for children at home she established. *Nevius v. Afr. Inland Mission Int'l*, 511 F.Supp.2d 114, 2007 U.S. Dist. LEXIS 70084 (2007).

Limitations period for defamation action, under District of Columbia law, against co-worker, who allegedly made statements that African-American male employee was harassing her, began to run when co-worker made statements. *Stith v. Chadbourne & Parke, LLP*, 160 F.Supp.2d 1, 2001 U.S. Dist. LEXIS 12857 (2001).

Limitations period, under District of Columbia law, for bringing defamation action against employer for its statements to Equal Employment Opportunity Commission (EEOC) began to run when statements were made. *Stith v. Chadbourne & Parke, LLP*, 160 F.Supp.2d 1, 2001 U.S. Dist. LEXIS 12857 (2001).

Application of discovery rule, under District of Columbia law, tolled limitations period in which African-American employee could bring defamation action against employer for its statements made to Equal Employment Opportunity Commission (EEOC) during its investigation of employee's race and gender discrimination charge; employee had no reason to know that employer made allegedly defamatory statements until employee read letter from employer to EEOC. *Stith v. Chadbourne & Parke, LLP*, 160 F.Supp.2d 1, 2001 U.S. Dist. LEXIS 12857 (2001).

District of Columbia's "single publication rule" provides that in case of single, integrated publication of periodical or edition of book or similar aggregate communication, statute of limitations for defamation action runs from date on which publication was first made available to general public. D.C. Code 1981, § 12-301(4). *Foretich v. Glamour*, 753 F. Supp. 955, 1990 U.S. Dist. LEXIS 17538 (1990).

Defamation cause of action arising out of distribution of reprints of magazine article relating to highly publicized child custody dispute accrued on date reprints were first distributed, for purposes of District of Columbia one-year limitations period for libel actions. D.C. Code 1981, § 12-301. *Foretich v. Glamour*, 753 F. Supp. 955, 1990 U.S. Dist. LEXIS 17538 (1990).

Defamation occurs on publication, and District of Columbia statute of limitations runs from date of publication. D.C. Code 1981, § 12-301. *Foretich v. Glamour*, 753 F. Supp. 955, 1990 U.S. Dist. LEXIS 17538 (1990).

Reprints of magazine article relating to highly publicized child custody dispute were "republications" of article that triggered new cause of action for defamation and commenced new limitations period under District of Columbia law, despite fact that copies distributed were exact photocopies of text as it appeared in magazine; once particular issue containing article was removed from stands, publication rights in article reverted to copyright owner who granted permission to distribute article and make discrete set of photocopies. D.C. Code 1981, § 12-301(4). *Foretich v. Glamour*, 753 F. Supp. 955, 1990 U.S. Dist. LEXIS 17538 (1990).

Under District of Columbia law, in case of single, integrated publication of periodical or edition of book, statute of limitations runs from date on which publication was first made available to general public. D.C. Code 1981, § 12-301. *Foretich v. Glamour*, 741 F. Supp. 247, 1990 U.S. Dist. LEXIS 3544 (1990).

Magazine's date of public distribution, i.e., date article is made generally available for sale, is date of publication, notwithstanding date appearing on its cover. D.C. Code 1981, § 12-301. *Foretich v. Glamour*, 741 F. Supp. 247, 1990 U.S. Dist. LEXIS 3544 (1990).

For statute of limitations purposes, libel actions accrue on date of publication. D.C. Code 1981, § 12-301(4). *Thomas v. News World Communications*, 681 F. Supp. 55, 1988 U.S. Dist. LEXIS 1308 (1988), dismissed by 696 F. Supp. 702, 1988 U.S. Dist. LEXIS 10516 (D.D.C. 1988).

Defamation occurs on publication, and the statute of limitations runs from the date of publication; where a statement is defamatory on its face, the plaintiff's reputation is damaged immediately upon publication. *Mullin v. Wash. Free Weekly Inc.*, 785 A.2d 296, 2001 D.C. App. LEXIS 233 (2001).

Cause of action accrued, and one-year statute of limitations on defamation action brought by subject of weekly newspaper article began to run, at time of publication, not at time of discovery; injury to subject's reputation occurred at time of publication. *Mullin v. Wash. Free Weekly Inc.*, 785 A.2d 296, 2001 D.C. App. LEXIS 233 (2001).

In defamation cases, at least where mass media are involved, the fact of injury can be readily determined, and thus any resulting defamation claims will accrue for purposes of the statute of limitations at the time the injury actually occurs, i.e., publication. *Mullin v. Wash. Free Weekly Inc.*, 785 A.2d 296, 2001 D.C. App. LEXIS 233 (2001).

Defamation cause of action against two non-media defendants accrued, and one-year statute of limitations began to run, at the same time as for newspaper itself, where non-media defendants' statements were those that subsequently appeared in newspaper article. *Mullin*

v. Wash. Free Weekly Inc., 785 A.2d 296, 2001 D.C. App. LEXIS 233 (2001).

Defamation occurs on publication, and thus, statute of limitations runs from date of publication. D.C. Code 1981, § 12-301(4). *Wallace v. Skadden, Arps, Slate, Meagher & Flom*, 715 A.2d 873, 1998 D.C. App. LEXIS 138 (1998).

Where statement is defamatory on its face, plaintiff's reputation is damaged immediately upon publication, thereby triggering running of one-year statute of limitations for defamation. D.C. Code 1981, § 12-301(4). *Wallace v. Skadden, Arps, Slate, Meagher & Flom*, 715 A.2d 873, 1998 D.C. App. LEXIS 138 (1998).

Former employee's right of action as to each allegedly defamatory statement made by employer accrued, for statute of limitations purposes, at time of each statement's publication; employee did not deny that she was aware of defamatory statements, of their publication, and of some injury at time that statements were made. D.C. Code 1981, § 12-301(4). *Wallace v. Skadden, Arps, Slate, Meagher & Flom*, 715 A.2d 873, 1998 D.C. App. LEXIS 138 (1998).

— Malicious prosecution, accrual of right of action or defense.

Under District of Columbia law, one year statute of limitations for plaintiff to bring malicious prosecution action began to run when the two criminal cases giving rise to the claim were dismissed. *Curtis v. Lanier*, 535 F.Supp.2d 89, 2008 U.S. Dist. LEXIS 14914 (2008).

Under District of Columbia law, the statute of limitations for malicious prosecution begins from the time that the underlying criminal or civil action is disposed of in favor of the plaintiff in the malicious prosecution case. *Curtis v. Lanier*, 535 F.Supp.2d 89, 2008 U.S. Dist. LEXIS 14914 (2008).

— Negligence, accrual of right of action or defense.

Complaint alleging failure to control police dog during arrest sounded in negligence, for which there is a three-year statute of limitations under District of Columbia law, as well as in intentional tort, for which there is a one-year statute of limitations. *Griggs v. Washington Metro. Area Transit Auth.*, 232 F.3d 917, 2000 U.S. App. LEXIS 30151 (C.A.D.C. 2000), dismissed by 2002 U.S. Dist. LEXIS 18413 (D.D.C. Sept. 30, 2002).

Under District of Columbia statute of limitations which requires actions to be brought within three years from the time the right to maintain the action accrues, statute commences running in ordinary negligence actions when the plaintiff suffers injury. D.C. Code § 12-301. *Ft. Myers Seafood Packers, Inc. v. Steptoe & Johnson*, 381 F.2d 261, 1967 U.S. App. LEXIS 5944 (C.A.D.C. 1967), writ of cer-

tiorari denied by 390 U.S. 946, 88 S. Ct. 1033, 19 L. Ed. 2d 1135, 1968 U.S. LEXIS 2337 (1968).

The statute of limitations' discovery rule is applicable, in the District of Columbia, to negligence cases where a plaintiff is aware of the injury but lacks knowledge of its cause or of wrongdoing by the defendant. *Lee v. Wolfson*, 265 F.Supp.2d 14, 2003 U.S. Dist. LEXIS 4013 (2003).

Limitations period under District of Columbia's three-year limitations period for negligence begins to run when plaintiff suffers injury. D.C. Code 1981, § 12-301(8); 18 U.S.C. §§ 1346(b), 2671 et seq. *Prouty v. National R. Passenger Corp.*, 572 F. Supp. 200, 1983 U.S. Dist. LEXIS 12963 (1983).

In ordinary negligence actions, District of Columbia three-year limitation statute begins to run at time plaintiff suffers injury. D.C. Code § 12-301. *Carmichael v. Egan*, 433 F. Supp. 465, 1977 U.S. Dist. LEXIS 15696 (1977), reversed by 584 F.2d 558, 189 U.S. App. D.C. 400 (1978).

Sufficient evidence supported finding that company was on inquiry notice more than three years before it filed suit that it had a negligence claim against certified public accountant (C.P.A.) for manner of preparation of tax returns, thus supporting submission of statute of limitations defense to jury; IRS agent had examined company's receivables to extent of preparing specific tax calculations, a document penned by the company's accountant established that he possessed the agent's memorandum setting forth adjustments to company's past tax returns and knew that the IRS had zeroed in on the company for incorrectly reporting its unbilled receivables, and the accountant also discovered that the C.P.A. had failed to notice in his review of company's split-off corporation that the corporation's tax returns were incorrect. *Ideal Elec. Sec. Co. v. Brown*, 817 A.2d 806, 2003 D.C. App. LEXIS 84 (2003).

Accrual of cause of action for negligence cases usually occurs upon date that injury results from the negligence. *Capitol Place I Assocs. L.P. v. George Hyman Constr. Co.*, 673 A.2d 194, 1996 D.C. App. LEXIS 46 (1996).

In more commonplace negligence actions, where fact of injury is readily discernible, cause of action accrues when injury occurs. D.C. Code 1981, § 12-301(8). *Bailey v. Greenberg*, 516 A.2d 934, 1986 D.C. App. LEXIS 463 (1986).

Generally, in negligence actions, where fact of injury is readily discernible, cause of action accrues when injury occurs. *Burns v. Bell*, 409 A.2d 614, 1979 D.C. App. LEXIS 488 (1979).

In ordinary negligence actions, statute requiring actions to be brought within three years "from time right to maintain action accrues" means time when plaintiff suffers injury. D.C. Code § 12-301. *Weisberg v. Williams, Con-*

nolly & Califano, 390 A.2d 992, 1978 D.C. App. LEXIS 552 (1978).

A negligence cause of action against a former fiduciary-administrator for allowing statute of limitations to run on a claim accrues at latest when debtor pleads statute as a defense in action brought by successor fiduciaries to collect on underlying claim. *Weisberg v. Williams, Connolly & Califano*, 390 A.2d 992, 1978 D.C. App. LEXIS 552 (1978).

— Penalties and forfeitures, accrual of right of action or defense.

One-year statute of limitations in D.C. Code 1981, § 12-301(5), as applied to libel actions for forfeiture of moneys used in connection with gambling, is tolled during time period between seizure of property and judgment in underlying prosecution. D.C. Code 1981, § 22-1505(c). *Ward v. District of Columbia*, 494 A.2d 666, 1985 D.C. App. LEXIS 412 (1985).

— Reimbursement, indemnity, or contribution, accrual of right of action or defense.

Statute of limitations on widow's claim that testator's brother had promised to reimburse her for any and all legal expenses arising out of her suit against him in federal court began to run no later than a year or two after dismissal of suit in 1966. D.C. Code 1981, §§ 12-301(7, 8), 12-302(a)(1). *Interdonato v. Interdonato*, 521 A.2d 1124, 1987 D.C. App. LEXIS 292 (1987).

Even if testator's son had claim based on testator's brother's promise to pay widow's legal expenses, statute of limitations began to run on son's 18th birthday, so that any claims for damages resulting from brother's failure to pay widow's legal expenses in 1966, as he allegedly promised in order to induce her dismiss claims against him, were barred by statute of limitations. D.C. Code 1981, §§ 12-301(7, 8), 12-302(a)(1). *Interdonato v. Interdonato*, 521 A.2d 1124, 1987 D.C. App. LEXIS 292 (1987).

Statute of limitations on widow's claim that testator's brother had promised to reimburse her for any and all legal expenses arising out of her suit against him in federal court began to run no later than a year or two after dismissal of suit in 1966. D.C. Code 1981, §§ 12-301(7, 8), 12-302(a)(1). *Interdonato v. Interdonato*, 521 A.2d 1124, 1987 D.C. App. LEXIS 292 (1987).

Action on implied contract to reimburse guarantor for payments made to creditor, which had reserved its rights against guarantor on discharge of principal debtor, was required to be brought within three years of time the right to maintain the action accrued, i.e., on payment of the debt by the guarantor to the creditor. D.C. Code § 12-301(7). *Knight v. Cheek*, 369 A.2d 601, 1977 D.C. App. LEXIS 423 (1977).

Where note given by guarantor to creditor in amount of balance of original claim against the

principal debtor was not taken as payment of the debt, giving of the note did not mature guarantor's cause of action against the debtor for reimbursement; hence cause of action accrued on each installment payment under the note, and since guarantor's suit for reimbursement was filed in February of 1975, statute of limitations ran as to all installment payments except those made after February, 1972. D.C. Code §§ 12-301(7), 28:3-802(1)(b). *Knight v. Cheek*, 369 A.2d 601, 1977 D.C. App. LEXIS 423 (1977).

Action brought by insurer against insured's former employee to recover amount of payment it made to insured under commercial fidelity policy for loss sustained by insured as result of false or dishonest acts of insured's former employee, was not action in indemnity, and therefore not subject to rule that indemnitee's claim does not accrue until his liability is fixed as result of judgment against him or payment by him. *Aetna Casualty & Surety Co. v. Windsor*, 353 A.2d 684, 1976 D.C. App. LEXIS 487 (1976).

Statute of limitations begins to run against right to contribution only from time of disproportionate discharge of common obligation by one of the common obligors. *Bair v. Bryant*, 96 A.2d 508, 1953 D.C. App. LEXIS 133 (Cr.App. 1953).

— **Retirement and Disability benefits, accrual of right of action or defense.**

Statute of limitations on claim for long-term disability benefits under ERISA plan accrued when participant was advised that her benefits had been terminated. *Pettaway v. Teachers Ins. & Annuity Ass'n of Am.*, 547 F.Supp.2d 1, 2008 U.S. Dist. LEXIS 31584 (2008).

— **Sales contracts, accrual of right of action or defense.**

Where earliest sales were made on October 5, 1956, under an agreement providing for 60 days credit, no suit could have been brought before December 4, 1956 and suit brought December 2, 1959, was within the three-year statute of limitations. D.C. Code 1951, § 12-201. *Curtis Bros., Inc. v. Thomasville Chair Co.*, 289 F.2d 461, 1961 U.S. App. LEXIS 4891 (C.A.D.C. 1961).

For limitations purposes under District of Columbia law, each sale of computer software program "package" by employer constituted transaction that stood on its own in context of employee's claim for breach of licensing agreement, and continuing wrong was not involved; injury complained of by employee involved distinct economic harm that resulted each time programs he developed were allegedly discounted by being sold in package form. D.C. Code 1981, § 12-301(7, 8). *Computer Data Sys-*

tems, Inc. v. Kleinberg, 759 F. Supp. 10, 1990 U.S. Dist. LEXIS 18944 (1990).

Cause of action for breach of contract wherein defendant's decedent sold all the personalty in her house and garage to the plaintiff accrued only upon defendant's refusal, after decedent's death, to relinquish possession of the subject property to plaintiff and was not barred by the applicable statute of limitations. D.C. Code § 12-301(2). *Neves v. Riley*, 447 F. Supp. 306, 1978 U.S. Dist. LEXIS 19170 (1978).

Three-year statute of limitations on action seeking specific performance of a buy-sell agreement concerning shares of corporation, D.C. Code 1981, § 12-301(7), began to run upon death of corporation's founder and cofounder's offer to purchase the stock. *Launay v. Launay, Inc.*, 497 A.2d 443, 1985 D.C. App. LEXIS 467 (1985).

— **Severable claims, accrual of right of action or defense.**

In action brought by former employee of non-profit public interest government watchdog organization against outside general counsel of organization and general counsel's law firm for breach of contract and breach of fiduciary duty, employee's claims arising from defendant's allegedly improper disclosure of information during his divorce proceeding, and arising from his departure from organization, were severable for statute of limitations purposes under District of Columbia law; claims were distinct allegations of breach of duty, were separated by time and stood on their own as claims. *Klayman v. Barmak*, 634 F.Supp.2d 56, 2009 U.S. Dist. LEXIS 60048 (2009).

— **Severable contracts and installments, accrual of right of action or defense.**

Tenant's action for overpayment of rent accrued when tenant first received request for rental payments definitively expressing landlords' interpretation of escalation clause and, therefore, was barred by 12-year District of Columbia statute of limitations; cause of action was based on lease interpretation and was not analogous to suit for nonpayment of installment obligation. D.C. Code 1981, § 12-301(6). *Air Transport Ass'n v. Lenkin*, 711 F. Supp. 25, 1989 U.S. Dist. LEXIS 4283 (1989), affirmed by 899 F.2d 1265, 283 U.S. App. D.C. 280, 1990 U.S. App. LEXIS 5416 (1990).

Where notes provided that they were to be repaid in "constant monthly installments" and holder was granted option of accelerating the entire unpaid principal sum of the note upon default in payment of any one installment, the notes were "installment obligations" and statute of limitations with respect to suit for nonpayment began to run on each installment as that installment fell due, and provision that unpaid balance of principal, if any, with ac-

crued interest would be due and payable seven years after date of note did not cause the note to fall due at the end of seven years. D.C. Code §§ 12-301, 28:3-307(2). *Toomey v. Cammack*, 345 A.2d 453, 1975 D.C. App. LEXIS 254 (1975).

Letter from holder of note to makers stating that although notes had been assumed by third-party holder would look to makers for payment in event of default did not constitute an anticipatory acceleration so as to commence running of statute of limitations. D.C. Code §§ 12-301, 28:3-307(2). *Toomey v. Cammack*, 345 A.2d 453, 1975 D.C. App. LEXIS 254 (1975).

Where a debt is payable in independent installments, right of action accrues upon each as it matures, and if obligee fails to commence his action until statutory bar has intervened in case of one or more installments, he can only recover those not barred when his action was commenced. D.C. Code 1961, §§ 12-201, 12-205, 12-301, 12-303. *Namerdy v. Generalcar*, 217 A.2d 109, 1966 D.C. App. LEXIS 140 (App. 1966).

— Statutory liability, accrual of right of action or defense.

Terminated university administrator's § 1981 retaliation claim was timely filed approximately one year after her discharge, where most analogous District of Columbia statute of limitations provided three-year period in which to file. 42 U.S.C. § 1981; D.C. Code 1981, § 12-301(8). *Carney v. American Univ.*, 151 F.3d 1090, 1998 U.S. App. LEXIS 18373 (C.A.D.C. 1998).

Under District of Columbia law, in a contract action, the statute of limitations generally expires three years after the accrual of the action. *Wash. Metro. Area Transit Auth. v. Quik Serve Foods, Inc.*, 402 F.Supp.2d 198, 2005 U.S. Dist. LEXIS 36130 (2005).

Former securities broker's complaint established that his claim for deprivation of property without due process accrued for limitations purposes no later than date of allegedly concocted testimony at disciplinary hearing. D.C. Code 1981, § 12-301(8). *Zandford v. NASD*, 30 F.Supp.2d 1, 1998 U.S. Dist. LEXIS 21922 (1998), affirmed by 221 F.3d 197, 343 U.S. App. D.C. 52, 2000 U.S. App. LEXIS 3741 (2000).

Under District of Columbia law, cause of action will be tolled during period that plaintiff corporation is controlled by wrongdoers. *BCCI Holdings (Luxembourg), S.A. v. Clifford*, 964 F. Supp. 468, 1997 U.S. Dist. LEXIS 7205 (1997).

District of Columbia's contract with for-profit corporation to provide management services for blind vendors constituted "continuing wrong" and tolled District of Columbia three-year statute of limitations for bringing action for violations of the Randolph-Sheppard Act; District of

Columbia Rehabilitation Services Administration's chronic failure to involve organization of blind vendors in any major decisions regarding for-profit corporation's services continued well within three-year statutory period for bringing action and alleged wrongful taking of funds from blind vendors continued within three years of filing of action. D.C. Code 1981, § 12-301; Rehabilitation Act Amendments of 1974, § 209(3), 20 U.S.C. § 107b-1(3). *Committee of Blind Vendors v. District of Columbia*, 736 F. Supp. 292, 1990 U.S. Dist. LEXIS 4429 (1990), reversed by, remanded by 28 F.3d 130, 307 U.S. App. D.C. 263, 1994 U.S. App. LEXIS 16543, 2 Accom. Disabilities Dec. (CCH) P2-013 (1994).

Although violation of home improvement licensing regulation occurs when contractor enters home improvement contract which requires advance payment, cause of action to recover payments does not accrue until home owners make payments; until that time there is no money to recover and no injury for cause of action. D.C. Code 1981, §§ 2-501, 2-502, 12-301(8). *Woodruff v. McConkey*, 524 A.2d 722, 1987 D.C. App. LEXIS 333 (1987).

Homeowner's cause of action to recover advance payments to unlicensed home improvement contractor accrued at time of payment and, therefore, action filed more than three years after payment was time barred. D.C. Code 1981, §§ 2-501, 2-502, 12-301(8). *Woodruff v. McConkey*, 524 A.2d 722, 1987 D.C. App. LEXIS 333 (1987).

Date on which unlicensed home improvement contractor may have breached contract with homeowners was irrelevant to determining whether statute of limitations had run on homeowners' actions to recover advance payments made to contractor, which was based solely upon unlicensed status of contractor, and not on deficient construction. D.C. Code 1981, §§ 2-501, 2-502, 12-301(8). *Woodruff v. McConkey*, 524 A.2d 722, 1987 D.C. App. LEXIS 333 (1987).

— Torts in general, accrual of right of action or defense.

Under the Washington Metropolitan Area Transit Authority (WMATA) Compact, as amended in 1976, a metro transit police officer engaged in a criminal investigation and an arrest has the same powers and limitations as a member of the District of Columbia Metropolitan Police Department, and consequently has only qualified immunity, not absolute immunity, for his torts, though the WMATA itself is cloaked with absolute immunity for torts arising in the exercise of governmental functions. *Griggs v. Washington Metro. Area Transit Auth.*, 232 F.3d 917, 2000 U.S. App. LEXIS 30151 (C.A.D.C. 2000), dismissed by 2002 U.S. Dist. LEXIS 18413 (D.D.C. Sept. 30, 2002).

Tort action accrues, under District of Columbia law, when plaintiff has knowledge or by exercise of reasonable diligence should have knowledge of: (1) existence of injury, (2) its cause in fact, and (3) some evidence of wrongdoing. *Firestone v. Firestone*, 76 F.3d 1205, 1996 U.S. App. LEXIS 2376 (C.A.D.C. 1996).

The statute of limitations on a malicious prosecution action runs from the date on which the prior, allegedly malicious, suit was terminated in favor of the defendant, not from the date on which the allegedly malicious suit was commenced. D.C. Code § 12-301. *Shulman v. Miskell*, 626 F.2d 173, 1980 U.S. App. LEXIS 17820 (C.A.D.C. 1980).

Where any wrongful act committed by defendant or its agents occurred on November 28, 1970, which was date on which plaintiff was arrested and charged with shoplifting while he was shopping at a branch of defendant's store, and all subsequent acts were those of the Commonwealth of Virginia, including the entry of a nol. pros. in case, claims based on malicious prosecution, false arrest, and defamation were barred by one-year period of limitations after November 28, 1971, whether the Virginia or District of Columbia statutes were applicable, and complaint filed on November 10, 1972 was properly dismissed as untimely. D.C. Code § 12-301(4); Code Va.1950, § 8-24. *Brewster v. Woodward & Lothrop, Inc.*, 530 F.2d 1016, 1976 U.S. App. LEXIS 13172 (C.A.D.C. 1976).

Homeowner's tort claims alleging fraud, contract breach, negligence, and intentional infliction of emotional distress (IIED) accrued, and the District of Columbia's three-year limitations period began to run, on settlement date of her note to mortgage lender. *George v. Bank of Am. N.A.*, 821 F.Supp.2d 299, 2011 U.S. Dist. LEXIS 125391 (2011).

Cause of action of parent of disabled student who allegedly prevailed in administrative proceeding brought under the IDEA, to recover attorney fees and costs incurred during the proceeding, accrued, and three-year statute of limitations under District of Columbia law began to run, when hearing officer issued determination in favor of parent, qualifying her as the prevailing party. *Davidson v. District of Columbia*, 736 F.Supp.2d 115, 2010 U.S. Dist. LEXIS 93300 (2010).

Under District of Columbia law, three-year limitations period began to run on female police officer's claim for intentional infliction of emotional distress against police department when department allegedly misrepresented that she failed to comply with the qualification requirements for her firearm and filed adverse action against her. *Moore v. District of Columbia*, 686 F.Supp.2d 88, 2010 U.S. Dist. LEXIS 17802 (2010), affirmed in part and reversed in part by, remanded by 445 Fed. Appx. 365, 2011 U.S. App. LEXIS 21965 (D.C. Cir. 2011).

Under District of Columbia law, as predicted by district court, patient's claim for replevin against manufacturer of prosthetic hip accrued, and statute of limitations began to run, when patient requested return of prosthesis from manufacturer, rather than when manufacturer took possession of device following patient's surgery. *Hunt v. DePuy Orthopaedics, Inc.*, 636 F.Supp.2d 23, 2009 U.S. Dist. LEXIS 61644 (2009).

For purposes of District of Columbia statute of limitations, tort cause of action accrues when party knows or, through exercise of reasonable diligence should have known, of injury suffered as result of wrongdoing. *AFT v. Bullock*, 539 F.Supp.2d 161, 2008 U.S. Dist. LEXIS 20019 (2008), vacated by 605 F. Supp. 2d 251, 2009 U.S. Dist. LEXIS 45791, 68 U.C.C. Rep. Serv. 2d (CBC) 424 (D.D.C. 2009).

Under District of Columbia law, situations where the discovery exception tolls the statute of limitations include: fraud, medical malpractice, legal malpractice, and fraudulent concealment. *Wash. Metro. Area Transit Auth. v. Quik Serve Foods, Inc.*, 402 F.Supp.2d 198, 2005 U.S. Dist. LEXIS 36130 (2005).

In cases where the relationship between the fact of injury and the tortious conduct is obscure, District of Columbia law provides for the application of a discovery rule and the statute of limitations will not run until plaintiff knows or reasonably should know that an injury has been suffered due to the defendant's wrongdoing. *Lee v. Wolfson*, 265 F.Supp.2d 14, 2003 U.S. Dist. LEXIS 4013 (2003).

Parking garage patron who was struck by unattended vehicle could not have automatically been expected to know that wrongful conduct on the part of vehicle manufacturer could have caused release of vehicle's parking brake at time of her injury, particularly when no defect in parking brake was revealed during investigation of accident by police or patron's expert; thus, relationship between patron's injury and manufacturer's alleged wrongdoing was obscure at time of injury and such that discovery rule would be applied to patron's tort claims and statute of limitations for such tort claims did not begin to run until patron knew, or should have known, of possibility of manufacturer's wrongdoing. *Lee v. Wolfson*, 265 F.Supp.2d 14, 2003 U.S. Dist. LEXIS 4013 (2003).

Under District of Columbia law, statute of limitations on tort claim ordinarily begins to run when plaintiff sustains tortious injury, but under discovery rule, it begins to run when plaintiff knows or reasonably should know that cause of action exists. *Jacobsen v. Oliver*, 201 F.Supp.2d 93, 2002 U.S. Dist. LEXIS 7938 (2002).

Under District of Columbia's discovery rule, cause of action accrues when plaintiff has

knowledge or by exercise of reasonable diligence should have knowledge of (1) existence of injury; (2) its cause in fact; and (3) some evidence of wrongdoing. *Jacobsen v. Oliver*, 201 F.Supp.2d 93, 2002 U.S. Dist. LEXIS 7938 (2002).

Under District of Columbia law, two-year limitations period for bringing tort claim against the United States under the Federal Tort Claims Act (FTCA) was not tolled by continuous treatment doctrine, where child's injury, including brain damage and quadriplegia, and its severity were apparent almost immediately following his birth. *Lewis v. United States*, 173 F.Supp.2d 52, 2001 U.S. Dist. LEXIS 19684 (2001), vacated by 290 F. Supp. 2d 1, 2003 U.S. Dist. LEXIS 23903 (D.D.C. 2003).

The statute of limitations for malicious prosecution begins to run when the underlying action against a plaintiff terminates, not when the underlying action is initiated. *Wiggins v. State Farm Fire & Cas. Co.*, 153 F.Supp.2d 16, 2001 U.S. Dist. LEXIS 11063 (2001).

Under District of Columbia law, health maintenance organization's (HMO) claims against officers of hospital for tortious interference with contract and negligence, arising from hospital's billing of HMO's members to recoup costs not paid by HMO, accrued on date HMO sent letter to hospital complaining of billing practice; HMO was on notice of injury and hospital's alleged wrongful conduct in causing injury. *Advantage Health Plan, Inc. v. Knight*, 139 F.Supp.2d 108, 2001 U.S. Dist. LEXIS 5559 (2001).

If District of Columbia continuing tort doctrine, under which cause of action did not accrue until tortious activity ceased, applied to health maintenance organization's (HMO) claims against officers of hospital for tortious interference with contract and negligence arising from hospital's billing of HMO's members to recoup costs not paid by HMO, statute of limitations began to run on date last bills were mailed to members. *Advantage Health Plan, Inc. v. Knight*, 139 F.Supp.2d 108, 2001 U.S. Dist. LEXIS 5559 (2001).

Statute of limitations applicable to a claim for malicious prosecution begins to run when the underlying action against a plaintiff terminates, not when the underlying action is initiated. *Parker v. Grand Hyatt Hotel*, 124 F.Supp.2d 79, 2000 U.S. Dist. LEXIS 17024 (2000).

Injury of vendors for alleged fraud, negligence, and breach of fiduciary duties by real estate professionals and attorneys with regard to sale of vendors' properties did not become concrete, and actions did not accrue, for statute of limitation purposes, until properties were foreclosed. D.C. Code 1981, § 12-301. *Farmer v. Mt. Vernon Realty, Inc.*, 720 F. Supp. 223, 1989

U.S. Dist. LEXIS 11534 (1989), affirmed without opinion by 983 F.2d 298, 299 U.S. App. D.C. 273, 1993 U.S. App. LEXIS 5074 (1993).

Statute of limitations applicable to conspiracy action runs separately from each overt act that is alleged to have caused damage to plaintiff. D.C. Code 1981, § 12-301(4). *Thomas v. News World Communications*, 681 F. Supp. 55, 1988 U.S. Dist. LEXIS 1308 (1988), dismissed by 696 F. Supp. 702, 1988 U.S. Dist. LEXIS 10516 (D.D.C. 1988).

Under District of Columbia law, limitations period on tort action typically begins to run on date of alleged injury. D.C. Code 1981, § 12-301(4). *Thomas v. News World Communications*, 681 F. Supp. 55, 1988 U.S. Dist. LEXIS 1308 (1988), dismissed by 696 F. Supp. 702, 1988 U.S. Dist. LEXIS 10516 (D.D.C. 1988).

Date on which three-year District of Columbia statute of limitations began to run on federal employee's Bivens claim alleging that he was denied due process in proceedings before the Merit Systems Protection Board by alleged intimidation of witnesses was date on which Secret Service official wrote memorandum to three witnesses to assure them that no actions of reprisal would be taken against them if they testified during MSPB hearings, because none of the alleged acts of intimidation could have occurred after memorandum was written. D.C. Code 1981, § 12-301(8). *Hagmeyer v. United States Dep't of Treasury*, 647 F. Supp. 1300, 1986 U.S. Dist. LEXIS 17972 (1986).

When the discovery rule applies, a cause of action accrues, for limitations purposes, when the claimant knows or by the exercise of reasonable diligence should know of: (1) the injury; (2) its cause in fact; and (3) some evidence of wrongdoing. *Doe v. Medlantic Health Care Group, Inc.*, 814 A.2d 939, 2003 D.C. App. LEXIS 2 (2003).

Patient did not have inquiry notice that hospital's receptionist was source of his co-workers' knowledge of his AIDS diagnosis, and thus, limitations period did not commence for action against hospital for breach of confidential relationship; receptionist, who was also co-worker of patient at her other job, denied having spread the rumors, four days after another co-worker had identified receptionist as source of rumors, and other co-worker's responses to patient's questions regarding receptionist's denial led patient to believe that other co-worker's statement that receptionist had been source of rumors was typical joking by other co-worker. *Doe v. Medlantic Health Care Group, Inc.*, 814 A.2d 939, 2003 D.C. App. LEXIS 2 (2003).

The statute of limitations on a tort claim ordinarily begins to run when the plaintiff sustains a tortious injury, or—if the so-called "discovery rule" applies because the relationship between the fact of injury and the alleged

tortious conduct is obscure—when the plaintiff knows or reasonably should know that the cause of action exists. *Beard v. Edmondson & Gallagher*, 790 A.2d 541, 2002 D.C. App. LEXIS 15 (2002).

In general, a “one-action rule” applies to limitation periods on tort actions: the plaintiff must bring a single suit for all present and future damages flowing from a discrete tortious act as soon as he or she becomes aware of some injury on which to base the suit. *Beard v. Edmondson & Gallagher*, 790 A.2d 541, 2002 D.C. App. LEXIS 15 (2002).

In cases involving traumatic injury or single breach of duty and immediately manifest injury, general rule for torts is that cause of action accrues for limitations purposes at time plaintiff’s interest is invaded or at time tortious act is committed which causes injury. *National R.R. Passenger Corp. v. Krouse*, 627 A.2d 489, 1993 D.C. App. LEXIS 151 (1993), writ of certiorari denied by 513 U.S. 817, 115 S. Ct. 75, 130 L. Ed. 2d 30, 1994 U.S. LEXIS 5548, 63 U.S.L.W. 3258 (1994).

Innocent joint venturer’s cause of action for alleged conversion of his share of joint venture proceeds that were in hands of managing joint venturers accrued at time proceeds were distributed. D.C. Code 1973, § 12-301. *Forté v. Goldstein*, 461 A.2d 469, 1983 D.C. App. LEXIS 384 (1983).

Innocent joint venturer’s cause of action against managing joint venturers for conversion of venture funds invested in certificate of deposit accrued when managing venturers pledged the certificate, without authorization of joint venturer, to secure loan unrelated to joint venture. D.C. Code 1973, § 12-301. *Forté v. Goldstein*, 461 A.2d 469, 1983 D.C. App. LEXIS 384 (1983).

Periodic renewal of joint venture’s certificate of deposit that had been pledged by managing partner of joint venture to secure loan unrelated to joint venture did not toll running of statute of limitation for cause of action for conversion as action accrued at time of pledge and pledge was not renewed. D.C. Code 1973, § 12-301. *Forté v. Goldstein*, 461 A.2d 469, 1983 D.C. App. LEXIS 384 (1983).

Statute of limitations begins to run as to tort on date of injury. *Shehyn v. District of Columbia*, 392 A.2d 1008, 1978 D.C. App. LEXIS 326 (1978).

Possession of personal property in leased premises for lessee during lease term could have been rightful and remained rightful until expiration of lease term so that any conversion of such property by lessee would not have occurred until expiration of lease created implied demand for return of property, and thus statute of limitations on conversion action would not have commenced to run until expiration of lease term. D.C. Code § 12-301(3, 7, 8).

Shehyn v. District of Columbia, 392 A.2d 1008, 1978 D.C. App. LEXIS 326 (1978).

Statute of limitations begins to run when identity of tortfeasor is known. *Eldridge v. Burrows*, 112 WLR 605 (Super. Ct. 1984).

— Wrongful seizure of property, accrual of right of action or defense.

Even if tenant was not notified of his right to be heard on amount of damages he suffered due to truncation of his lease term by condemnation, in view of fact that he was informed that his leasehold was being prematurely terminated when he received his copy of order requiring him to vacate his leased premises, all of damage to tenant for and from taking was either determinable at that point or shortly thereafter when he presumably made inquiries about moving costs and other accommodations, and thus he could have sought redress for damages then, and thus claim by tenant 28 years later was barred by statute of limitations. *Montague v. Kunzig*, 442 F.2d 1230, 1971 U.S. App. LEXIS 12343 (C.A.D.C. 1971).

Acknowledgment or new promise.

Where payee surrendered note to maker in January, 1949, at which time the note was not barred by three-year statute of limitations, and the maker in turn gave the payee a second note which was a direct promise to pay, the second note was within statute under which a new or continuing contract takes a case out of the operation of statute of limitations, and hence suit instituted on second note on October 31, 1949, was not barred by three year statute of limitations, notwithstanding that more than three years had then elapsed since the signing of the first note. D.C. Code 1951, §§ 12-201, 12-305. *Garfinkle v. Needle*, 201 F.2d 202, 1952 U.S. App. LEXIS 2394 (C.A.D.C. 1952).

Letter, by first attorney for person injured in automobile accident to second attorney to whom injured person’s action against motorist had been referred, stating that both attorneys had to sue injured person on behalf of doctor for unpaid portion of such doctor’s fee or they would have to personally take care of balance due the doctor was sufficient written acknowledgment of first attorney’s debt to remove doctor’s cause of action against first attorney under written assignment agreement from operation of statute of limitations. D.C. Code §§ 12-301(7), 28-3504. *Heffelfinger v. Gibson*, 290 A.2d 390, 1972 D.C. App. LEXIS 376 (1972).

A distinct and unequivocal acknowledgment of debt as a still subsisting personal obligation constitutes implied promise to pay it and takes contract out of statute of limitations. D.C. Code §§ 12-301, 28-3504. *Heffelfinger v. Gibson*, 290 A.2d 390, 1972 D.C. App. LEXIS 376 (1972).

An acknowledgment or promise must be made either to the creditor or to someone acting for him, or to some third person with intent that it be known by and influence the action of the creditor, in order to take a case out of the statute of limitations. D.C. Code 1951, §§ 12-201, 12-305. *Grass v. Eiker*, 123 A.2d 613, 1956 D.C. App. LEXIS 278 (Cr.App. 1956).

The mere listing of debts in a report to the securities and exchange commission is not an acknowledgment sufficient to stop the running of the statute of limitations against such listed debts. D.C. Code 1951, §§ 12-201, 12-305. *Grass v. Eiker*, 123 A.2d 613, 1956 D.C. App. LEXIS 278 (Cr.App. 1956).

Administrative delay.

Court would take judicial notice of the administrative delay occurring in most instances between the court clerk's receipt of an in forma pauperis (IFP) complaint and the formal filing or docketing of the complaint, and determine that plaintiff's §§ 1983 action, though docketed as filed outside three-year limitations period applicable to §§ 1983 actions in District of Columbia, was timely filed. *Lewis v. District of Columbia*, 643 F.Supp.2d 119, 2009 U.S. Dist. LEXIS 72263 (2009).

Adverse possession.

Rowhouse owners did not obtain ownership to vacant lot behind their properties pursuant to deeds from their predecessors, and thus could not claim ownership of the vacant lot based on their predecessors' ownership by adverse possession, though the deeds stated they conveyed all "rights" belonging to their properties, as the word "rights," without more, did not include conveyance of a parcel of land other than the one expressly described, deeds did not describe the vacant lot, and two of the deeds expressly disclaimed conveying any rights in the vacant lot. *Sears v. Catholic Archdiocese of Wash.*, 5 A.3d 653, 2010 D.C. App. LEXIS 555 (2010).

Privity did not exist between rowhouse owners and their predecessors, as required in order for owners to tack their own adverse possession of vacant lot to that of their predecessors and establish 15-year period, in adverse possession action against Archdiocese seeking to quiet title to vacant lot behind rowhouse owners' properties, where none of the deeds to owners purported to include any description or reference to the vacant lot, and in two of the deeds predecessors expressly disavowed conveyance of any rights in the vacant lot. *Sears v. Catholic Archdiocese of Wash.*, 5 A.3d 653, 2010 D.C. App. LEXIS 555 (2010).

Casual acts are not enough to establish ownership by adverse possession, but there is a presumption, effective to establish title in absence of evidence to contrary, that possession is

adverse whenever there is open and continuous use of another's land. D.C. Code § 12-301(1). *Gary v. Dane*, 411 F.2d 711, 1969 U.S. App. LEXIS 8959 (C.A.D.C. 1969).

Landowner could not acquire District of Columbia's public school property by adverse possession of area where landowner had built garage and fence; no time could run against sovereign, the District held title in its governmental capacity and dedicated the land to a public use, nothing indicated that the District abandoned or intended to abandon any part of the property during its ownership, and even after District conveyed the property for operation of charter school, it remained dedicated to public use for public education. *Solid Rock Church v. Friendship Pub. Charter Sch., Inc.*, 925 A.2d 554, 2007 D.C. App. LEXIS 250 (2007).

In order to have exclusive possession for the purpose of establishing adversity, a claimant must hold possession of the property for himself as his own and not for another; the adverse claimant's possession cannot be shared with the true owner. *Estate of Patterson v. Sharek*, 924 A.2d 1005, 2007 D.C. App. LEXIS 258 (2007).

Trustees failed to establish that landowner adversely possessed 25-foot strip of land over which adjoining landowners had an easement; adjoining landowners regularly used the 25-foot strip of land for ingress and egress, even when landowner parked his vehicle on the disputed tract of land. *Estate of Patterson v. Sharek*, 924 A.2d 1005, 2007 D.C. App. LEXIS 258 (2007).

To establish title by adverse possession, claimant must demonstrate actual, open and notorious, exclusive, continuous, and hostile possession of premises for prescribed statutory period. D.C. Code 1981, § 12-301(1). *Estate of Wells v. Estate of Smith*, 576 A.2d 707, 1990 D.C. App. LEXIS 140 (1990).

Even assuming that tenant possessed landlord's property pursuant to tenancy at will which expired with death of landlord, rather than becoming adverse possessor, tenant became by operation of law, tenant at sufferance upon landlord's death, in absence of such hostile possession as was required to assert claim by adverse possession. D.C. Code 1981, § 12-301(1). *Estate of Wells v. Estate of Smith*, 576 A.2d 707, 1990 D.C. App. LEXIS 140 (1990).

To establish title by adverse possession, claimant must demonstrate actual, open and notorious, exclusive, continuous, and hostile possession of premises for prescribed statutory period, under claim of right or title. D.C. Code 1981, § 12-301(1). *Smith v. Tippet*, 569 A.2d 1186, 1990 D.C. App. LEXIS 25 (1990).

Possession and use by plaintiff of the disputed property for 30 years was actual, open and notorious, exclusive, continuous and hos-

tile, and plaintiff proved her claim for adverse possession of the disputed strip of land, 30 inches in width. *Ifft v. Trimble*, 120 WLR 1577 (Super. Ct. 1992).

Agreements as to period of limitation.

Statute stating that, except as otherwise specifically provided for by law, actions for which limitation was not otherwise specifically provided "may not be brought" after expiration of three years did not prevent private parties from agreeing to toll that limitations period. D.C. Code 1981, § 12-301. *Hunter-Boykin v. George Wash. Univ.*, 132 F.3d 77, 1998 U.S. App. LEXIS 233 (C.A.D.C. 1998).

Amendment of pleadings, generally.

Allowing church and trustees to amend answer to include three-year statute of limitations defense was not abuse of discretion, in action brought by plaintiff who suffered permanent brain damage from exposure to lead paint; limitations defense was obvious from face of complaint, plaintiff did not forego other avenues of relief in reliance on defendants' failure to assert limitations defense, and accrual of litigation expenses was undocumented and unpersuasive in light of plaintiff's extended delay in bringing suit. *Briggs v. Israel Baptist Church*, 933 A.2d 301, 2007 D.C. App. LEXIS 580 (2007).

Bankruptcy.

Automatic stay did not bar debtor from pursuing abuse of process claim against secured creditor during pendency of involuntary bankruptcy, and thus, Bankruptcy Code subsection permitting debtor to commence action before end of limitation period occurring on or after commencement of case did not apply to toll District of Columbia statute of limitations period for abuse of process claim. Bankr.Code, 11 U.S.C. §§ 108(a)(1), 362; D.C. Code 1981, § 12-301(8). *Rothenberg v. Ralph D. Kaiser Co.* (In re Rothenberg), 173 B.R. 4, 1994 Bankr. LEXIS 1435 (1994).

Proceeding to recover interim compensation paid to attorney who represented debtor prior to conversion of case from Chapter 11 to Chapter 7, on ground that there was administrative insolvency and that attorney was entitled to share only pro rata with other administrative claimants, was proceeding arising under Bankruptcy Code and was not subject to three-year nonbankruptcy statute of limitations on actions for refund of monies paid. D.C. Code 1981, § 12-301(8). *Guinee v. Toombs* (In re Kearing), 170 B.R. 1, 1994 Bankr. LEXIS 1033 (1994).

Certification of state law question by federal court.

On certification from United States Court of Appeals, by which question was certified as to applicability of discovery rule to sexual abuse

case, it would be premature, in absence of factual record, for District of Columbia Court of Appeals to address defendant's claim that there was no corroboration either of plaintiffs' claim that they were molested or of their allegation that they repressed their recollections of their abuse; case came to federal appeals court from order granting motion to dismiss for failure to state claim, and for purposes of certified question, that court assumed that abuse occurred and that victims' memory of it was totally repressed. D.C. Code 1981, § 12-301; Fed.Rules Civ.Proc.Rule 12(b)(6), 18 U.S.C. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Commencement of proceedings and relation back—In general.

Graduate student knew or had reason to know of her spoliation of evidence claim against university premised on alleged destruction of evidence from her files, triggering District of Columbia's three-year limitations period, when she received e-mail from university stating that she was not eligible for graduation because she had not completed required credit hours. *Ling Yuan Hu v. George Wash. Univ.*, 766 F.Supp.2d 236, 2011 U.S. Dist. LEXIS 20472 (2011), affirmed by 2011 U.S. App. LEXIS 17663 (D.C. Cir. July 6, 2011).

Graduate student was on notice of her Rehabilitation Act (RA) and ADA claims that university failed to accommodate her as non-native English speaker, triggering District of Columbia's three-year limitations period for suing on RA claim and period for initiating administrative proceedings on ADA claim, not later than when she received e-mail notifying her that she could not graduate because, among other reasons, she had failed comprehensive exam for which she had unsuccessfully requested accommodation. *Ling Yuan Hu v. George Wash. Univ.*, 766 F.Supp.2d 236, 2011 U.S. Dist. LEXIS 20472 (2011), affirmed by 2011 U.S. App. LEXIS 17663 (D.C. Cir. July 6, 2011).

Employee's filing an Equal Employment Opportunity Commission (EEOC) discrimination charge alleging violations of the District of Columbia Human Rights Act (DCHRA) by medical center did not toll one year limitations period for her defamation claims under District of Columbia law against center; defamation was not an unlawful discriminatory practice under the DCHRA. *Brown v. Children's Nat'l Med. Ctr.*, 773 F.Supp.2d 125, 2011 U.S. Dist. LEXIS 33628 (2011).

In attorney malpractice diversity case, the filing of complaint was sufficient to toll District of Columbia three-year limitations statute and thus action was not time-barred since complaint had been filed less than three years after cause of action arose, even if plaintiff had not mailed copies of complaint to defendants until

four days after limitations statute had run. D.C. Code § 12-301(7, 8); D.C. Code SCR, Civil Rule 4(c)(3); Fed.Rules Civ.Proc. rule 3, 18 U.S.C. *Manatee Cablevision Corp. v. Pierson*, 433 F. Supp. 571, 1977 U.S. Dist. LEXIS 15363 (1977).

Failure of plaintiff to deliver summonses and copies of complaint to the United States Marshal until 18 days after period of limitations had run was not excusable because of fact that two of corporate defendants were not residents of the District of Columbia and could not be sued and would not be served until plaintiff first filed traffic act bond required by D.C. Code. D.C. Code §§ 12-301, 40-423; D.C. Code General Sessions Court Rules, § 1, rules 3, 4. *Criterion Ins. Co. v. Lyles*, 244 A.2d 913, 1968 D.C. App. LEXIS 181 (App. 1968).

— **Amendment of pleadings, commencement of proceedings and relation back.**

Defamation claim against employer for statements it made to Equal Employment Opportunity Commission (EEOC) did not relate back to original race discrimination complaint, for limitations purposes, because original complaint contained no factual allegations suggesting that employer made any statement to EEOC that could be considered defamatory. *Stith v. Chadbourne & Parke, LLP*, 160 F.Supp.2d 1, 2001 U.S. Dist. LEXIS 12857 (2001).

New claim in amended complaint that magazine authorized republication of magazine article relating to highly publicized child custody dispute did not relate back to date of filing of original complaint and, accordingly, was barred by District of Columbia one-year limitations period for libel where original complaint did not allege republication. Fed.Rules Civ.Proc.Rule 15(c), 18 U.S.C.; D.C. Code 1981, § 12-301. *Foretich v. Glamour*, 753 F. Supp. 955, 1990 U.S. Dist. LEXIS 17538 (1990).

For purposes of District of Columbia limitations period governing common-law diversity contract claim, claim by journalist that broadcasting company breached agreement to pay him for "news spots" based on investigative article written by journalist related back to original timely complaint alleging that broadcasting company breached agreement in other respects. D.C. Code 1981, §§ 12-301(7), 12-308. *Peckarsky v. American Broadcasting Co.*, 603 F. Supp. 688, 1984 U.S. Dist. LEXIS 21442 (1984).

Central inquiry in determining whether amended complaint relates back to original complaint is to determine whether the adverse party, viewed as a reasonably prudent person, ought to have been able to anticipate or should have expected that the character of the originally pleaded claim might be altered or that other aspects of the conduct, transaction, or occurrence set forth in the original pleading

might be called into question. *Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

The fact that an amendment changes the legal theory on which the action initially was brought is of no consequence if the factual situation upon which the action depends remains the same and has been brought to defendant's attention by the original pleading. *Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

Amended complaint's informed consent claim against hospital related back to original complaint in which patient alleged negligence in performance of her surgery; amended complaint merely added another legal theory to same set of facts, and hospital did not claim prejudice. *Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

Amended complaint's informed consent claim against physician did not relate back to original complaint in which patient alleged negligence in performance of her surgery; patient had voluntarily dismissed original complaint, and informed consent claim was not brought on basis of newly discovered evidence. *Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

Amendment of complaint, which contained count for common-law slander charging that store detectives accused plaintiff's decedent of being either a drunkard or drug addict or both, so as to include statement that plaintiff additionally relied on Virginia statutory relief for slander, did not, for purposes of statute of limitations, commence a new cause of action. D.C. Code § 12-301(4). *May Dept's Stores Co. v. Devercelli*, 314 A.2d 767, 1973 D.C. App. LEXIS 405 (1973).

— **Counterclaims and cross-actions, commencement of proceedings and relation back.**

To extent that amended, reinstated counterclaim stated cause of action which was for first time being asserted, it could not relate back for limitation purposes. D.C. Code §§ 12-301, 28:2-725(1, 2, 4); D.C. Code SCR, Civil Rule 15(c). *Sears, Roebuck & Co. v. Goudie*, 290 A.2d 826, 1972 D.C. App. LEXIS 382 (1972), writ of certiorari denied by 409 U.S. 1049, 93 S. Ct. 523, 34 L. Ed. 2d 501, 1972 U.S. LEXIS 514 (1972).

— **Defects or irregularities, commencement of proceedings and relation back.**

In light of evident prejudice to defendants in maintaining defense and other factors, amended civil rights complaint naming the United States Secret Service agents who had been joined only as fictitious defendants in

prior complaint did not relate back to date of filing of such prior complaint, and claim against such agents was therefore barred by applicable statute of limitations. D.C. Code § 12-301(8); Fed.Rules Civ.Proc. Rule 15(a, c), (c)(2), 18 U.S.C. Saffron v. Wilson, 481 F. Supp. 228, 1979 U.S. Dist. LEXIS 10410 (1979).

Reinstatement of action by corporation upon payment of required corporate fees would restore action to its predissmissal status with respect to statute of limitations. D.C. Code §§ 12-301(7), 29-938(d), 29-941(b); D.C. Code SCR, Civil Rule 60(b)(1). York & York Constr. Co. v. Alexander, 296 A.2d 710, 1972 D.C. App. LEXIS 282 (1972).

— Intervention or new parties, commencement of proceedings and relation back.

Since plaintiffs amended their civil rights complaint to add another defendant and filed amended complaint within three years of earliest date on which they might have had notice of their claims, action was timely filed under District of Columbia statute of limitations. D.C. Code 1981, §§ 12-301, 12-301(4, 8); 42 U.S.C. § 1985(3). Hobson v. Wilson, 737 F.2d 1, 1984 U.S. App. LEXIS 21328 (C.A.D.C. 1984).

Employee's claims against government officials who were added as additional defendants related back to filing of original civil rights complaint, so that claims were not barred by statute of limitations, where additional defendants were aware of employee's claims and would typically have been represented by United States Attorney's office, and where employee only recently learned of their involvement. Civil Rights Act of 1964, § 201 et seq., 42 U.S.C. §§ 2000a et seq.; D.C. Code 1981, § 12-301(8). Pope v. Bond, 641 F. Supp. 489, 1986 U.S. Dist. LEXIS 21850 (1986).

— New action after dismissal, commencement of proceedings and relation back.

Under District of Columbia law the pendency of an action involuntarily dismissed without prejudice does not operate to toll running of the statute of limitations. D.C. Code 1973, § 12-301(4, 8). Dupree v. Jefferson, 666 F.2d 606, 1981 U.S. App. LEXIS 17090 (C.A.D.C. 1981).

Whatever limitations period of District of Columbia was applicable to Civil Rights Act suit complaining of alleged deprivation of constitutional rights in encounters with police officers, it was not arrested during pendency of first action, which was involuntarily dismissed without prejudice for want of prosecution, and time during which first action was pending was not to be excluded in determining whether subsequent action was timely commenced. Fed.Rules Civ.Proc. Rule 41(b), 18 U.S.C.; D.C. Code 1973, § 12-301(4, 8). Dupree v. Jefferson,

666 F.2d 606, 1981 U.S. App. LEXIS 17090 (C.A.D.C. 1981).

Concealment of cause of action.

"Fraudulent concealment," which tolls statute of limitation for bringing tort action in District of Columbia, generally requires that defendant make affirmative misrepresentation tending to prevent discovery of wrongdoing but failure to disclose by one who has duty to do so, such as one standing in fiduciary or confidential relationship, can also establish fraudulent concealment. Firestone v. Firestone, 76 F.3d 1205, 1996 U.S. App. LEXIS 2376 (C.A.D.C. 1996).

Under District of Columbia law, fraudulent concealment doctrine requires something of an affirmative nature designed to prevent discovery of a cause of action. Lewis v. United States, 173 F.Supp.2d 52, 2001 U.S. Dist. LEXIS 19684 (2001), vacated by 290 F. Supp. 2d 1, 2003 U.S. Dist. LEXIS 23903 (D.D.C. 2003).

Under District of Columbia law, failure to disclose information does not rise to the level of fraudulent concealment designed to prevent discovery of a cause of action. Lewis v. United States, 173 F.Supp.2d 52, 2001 U.S. Dist. LEXIS 19684 (2001), vacated by 290 F. Supp. 2d 1, 2003 U.S. Dist. LEXIS 23903 (D.D.C. 2003).

Under District of Columbia law, an act of fraudulent concealment by a defendant does not relieve a plaintiff of his independent duty to pursue his cause of action diligently; rather, a claim of fraudulent concealment is available only to a plaintiff who has exercised due diligence in the pursuit of his cause. Lewis v. United States, 173 F.Supp.2d 52, 2001 U.S. Dist. LEXIS 19684 (2001), vacated by 290 F. Supp. 2d 1, 2003 U.S. Dist. LEXIS 23903 (D.D.C. 2003).

For fraudulent concealment to toll the statute of limitations, there must be both fraudulent concealment on the part of defendant and reasonable diligence on the part of plaintiff to discover his claim. Wiggins v. State Farm Fire & Cas. Co., 153 F.Supp.2d 16, 2001 U.S. Dist. LEXIS 11063 (2001).

Judgment debtor who brought action against judgment creditor for malicious prosecution, alleging that creditor wrongfully obtained default judgment against him, could not show that creditor attempted to conceal the prior action against debtor, as required to prove fraudulent concealment for purposes of tolling limitations period for malicious prosecution; debtor knew of prior action against him by creditor and moved to intervene. Wiggins v. State Farm Fire & Cas. Co., 153 F.Supp.2d 16, 2001 U.S. Dist. LEXIS 11063 (2001).

Fraudulent concealment doctrine did not save legal malpractice claim of Watergate conspirator from statute of limitations bar. D.C. Code § 12-301. Hunt v. Bittman, 482 F. Supp.

1017, 1980 U.S. Dist. LEXIS 9795 (1980), affirmed without opinion by 652 F.2d 196, 209 U.S. App. D.C. 203 (1981).

Record failed to support contention of plaintiffs in civil rights action against United States Secret Service that Secret Service fraudulently concealed identity of Secret Service agents joined as fictitious defendants by plaintiff, and applicable three-year statute of limitations therefore was not tolled for reasons of fraudulent concealment. D.C. Code § 12-301(8); Fed.Rules Civ.Proc. Rule 15(c), 18 U.S.C. Saf-ron v. Wilson, 481 F. Supp. 228, 1979 U.S. Dist. LEXIS 10410 (1979).

Information supplied by manufacturer of drug Aralen as to possible hearing loss did not amount to fraudulent concealment sufficient to toll statute of limitations on a claim to recover for hearing loss allegedly caused by weekly use of the drug for two-year period since for the years in question a standard medical manual emphasized the various toxicity reactions which plaintiff experienced and contained specific statement that a few cases of a nerve-type deafness have been reported after prolonged therapy, usually in high doses and all that was added three years later was report of a particular case strikingly similar to plaintiff's. D.C. Code § 12-301(8). Grigsby v. Sterling Drug, Inc., 428 F. Supp. 242, 1975 U.S. Dist. LEXIS 11278 (1975), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Statute of limitations was not tolled with respect to former government employee's claim of alleged conspiracy to deprive him of his job on theory that fraudulent concealment of material facts by conspirators precluded him from bringing lawsuit within statutory period where employee not only knew the essential facts relating to his cause of action well before statute of limitations had run on his claim but publicly alleged many of the same evidentiary details which he asserted in suit prior to running of the statute of limitations. D.C. Code § 12-301(8). Fitzgerald v. Seamans, 384 F. Supp. 688, 1974 U.S. Dist. LEXIS 6366 (1974), affirmed in part by 553 F.2d 220, 180 U.S. App. D.C. 75, 1977 U.S. App. LEXIS 14625 (1977).

Statute of limitations was not tolled with respect to action brought by former government employee against government officials for alleged conspiracy to deprive him of his job on theory that members of conspiracy had fraudulently concealed certain crucial facts from him and that he was not able to discern concerted pattern of harassment by government officials acting outside the scope of their authority until Civil Service Commission hearings where, in letter to Civil Service Commission appealing his dismissal, former employee clearly maintained that acts of harassment he had suffered had been unauthorized and completely outside ambit of any legitimate official function. D.C.

Code § 12-301(8). Fitzgerald v. Seamans, 384 F. Supp. 688, 1974 U.S. Dist. LEXIS 6366 (1974), affirmed in part by 553 F.2d 220, 180 U.S. App. D.C. 75, 1977 U.S. App. LEXIS 14625 (1977).

When party claiming protection of statute of limitations has employed affirmative acts to fraudulently conceal either existence of claim or facts forming basis of cause of action, such conduct will toll running of statute of limitations. Cevenini v. Archbishop of Washington, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Fact that plaintiff knew, or by exercise of due diligence could have known, that he may have had cause of action is defense to claim of fraudulent concealment as basis for tolling of statute of limitations; act of fraudulent concealment by defendant does not relieve plaintiff of his independent duty to pursue his cause of action diligently. Cevenini v. Archbishop of Washington, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Parishioners who undertook no investigation until twelve years after they first realized that they might have cause of action against priest, who allegedly sexually abused them, did not exhibit due diligence, and as such, they could not avail themselves of fraudulent concealment doctrine to toll statute of limitations on their claims. Cevenini v. Archbishop of Washington, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Even if true, parishioners' allegations that archdiocese failed to disclose information to them and that archdiocese's policy of transferring priest, who allegedly sexually abused parishioners, from one parish to another had effect of concealing prior allegations of sexual abuse did not constitute affirmative acts of fraudulent concealment so as to toll statute of limitations on parishioners' claims. Cevenini v. Archbishop of Washington, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Refusal to protect plaintiff from running of statute of limitations may be especially unfair where her lack of knowledge of her injuries was proximately caused by defendant's own wrongful conduct. D.C. Code 1981, § 12-301. Farris v. Compton, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Home improvement contractor's failure to obtain license, not any fraudulent concealment, formed basis of homeowners' actions to recover advance payments and, therefore, doctrine of fraudulent concealment did not toll running of statute of limitations. D.C. Code 1981, §§ 2-501, 2-502, 12-301(8). Woodruff v. McConkey, 524 A.2d 722, 1987 D.C. App. LEXIS 333 (1987).

Defendant's allegedly fraudulent concealment of identity of his insurer did not prevent plaintiff from timely filing suit, where neither defendant nor insurer prevented plaintiff or her attorney from ascertaining that she could sue defendant for her injuries before statute of

limitations ran. *Bailey v. Greenberg*, 516 A.2d 934, 1986 D.C. App. LEXIS 463 (1986).

Affirmative acts employed by a party to fraudulently conceal either existence of a claim or facts forming basis of a cause of action toll the running of limitations periods; however, defense to a claim of fraudulent concealment is that plaintiff knew, or by exercise of due diligence could have known, that he may have had a cause of action. *Estate of Chappelle v. Sanders*, 442 A.2d 157, 1982 D.C. App. LEXIS 298 (1982).

Accrual of cause of action is suspended when its basis is fraudulently concealed from plaintiff and the statute of limitations will not commence to run until plaintiff discovers or has reasonable opportunity to discover the wrong, but, generally, defendant must have done something of affirmative nature designed to prevent discovery of cause of action. *William J. Davis, Inc. v. Young*, 412 A.2d 1187, 1980 D.C. App. LEXIS 262 (1980).

Although mere silence, failure to disclose, or ignorance of facts establishing a claim may not ordinarily constitute fraudulent concealment such as will preclude statute of limitations running, any statement, word or act which tends to suppress the truth raises the suppression to that level and, in such instances, defendant's affirmative efforts to divert or prevent discovery of original fraud give continuing character to original act which deprives it of statute of limitations protection until discovery. *William J. Davis, Inc. v. Young*, 412 A.2d 1187, 1980 D.C. App. LEXIS 262 (1980).

Since second raising of limitations defense by clients' opponent, which was made when clients were represented by successor counsel, was made more than three years before filing of clients' malpractice suit against law firm for failing to timely file clients' claim, and clients as of that date were on actual notice of all elements that formed basis of their claim against firm, clients' contention that firm concealed running of statute of limitations on their claim thereby tolling running of applicable three-year limitation period as to their malpractice suit did not bar successful raising of firm's statute of limitations defense. D.C. Code § 12-301. *Weisberg v. Williams, Connolly & Califano*, 390 A.2d 992, 1978 D.C. App. LEXIS 552 (1978).

Fraudulent concealment of existence of a cause of action tolls running of a conventional statute of limitations. *Weisberg v. Williams, Connolly & Califano*, 390 A.2d 992, 1978 D.C. App. LEXIS 552 (1978).

In legal malpractice field, statute of limitations will not run where existence of a cause of action for legal malpractice has been fraudulently concealed by affirmative misrepresentations; concealment will exist if attorney has knowingly made false representations; it is

only then that his conduct, by way of estoppel or otherwise, will toll running of statute. *Weisberg v. Williams, Connolly & Califano*, 390 A.2d 992, 1978 D.C. App. LEXIS 552 (1978).

A fraudulent concealment tolls a statute of limitations only for so long as concealment endures. *Weisberg v. Williams, Connolly & Califano*, 390 A.2d 992, 1978 D.C. App. LEXIS 552 (1978).

In action in which purchasers sought rescission of settlement agreements entered into pursuant to previous action for breach of contract, in view of fact that rescission action was based upon allegedly fraudulent misrepresentation consisting of vendors' statement that option purchased did not include strip-mining rights under Pennsylvania law and in view of fact that such question was matter equally amenable to research and resolution by either party, statute of limitations on rescission action could not be tolled on theory that vendors fraudulently concealed facts from purchasers. D.C. Code § 12-301(7, 8). *Doolin v. Environmental Power, Ltd.*, 360 A.2d 493, 1976 D.C. App. LEXIS 315 (1976).

Even concealment or silence by drawee is not enough to toll three-year statute of limitations absent some trick or connivance to exclude suspicion or prevent payee's discovery by ordinary diligence of right of action for alleged negligent cashing of check and delivering of proceeds to unauthorized person. D.C. Code 1961, § 12-301(7, 8). *Adrian v. American Sec. & Trust Co.*, 211 A.2d 771, 1965 D.C. App. LEXIS 213 (App. 1965).

Concealment, by mere silence, of breach of implied warranty to do work in workmanlike manner would not be sufficient to toll statutes of limitations. D.C. Code 1940, § 12-201. *Poole v. Terminix Co. of Md. & Wash.*, 84 A.2d 699, 1951 D.C. App. LEXIS 237 (Cr.App. 1951).

Statutes of limitations applicable to consumer's claims against compact disc (CD) producers and distributors, under Antitrust Act and Consumer Protection Procedures Act, were not tolled, pursuant to fraudulent concealment doctrine, where consumer's attorney was served with complaint asserting same basic claims against producers and distributors some four years and seven months before filed action on behalf of consumer. *Marbry v. EMI Music Distribution, Inc.*, 129 WLR 2065 (Super. Ct. 2001).

The discovery rule exception was not allowed where plaintiff claimed a crack in his painting was due to the mounting techniques used by the defendant nearly eleven years earlier. *O'Hearn v. Parsons*, 119 WLR 277 (Super. Ct. 1991).

Conflicts of law.

District of Columbia's three-year statute of limitations for simple contract actions, rather than a Michigan statute of limitations, was

applicable to diversity action which was brought, in the District, against trustee and administrators of pension plan for breaching agreement to pay lump sum to retired union president by refusing to release portion of the lump-sum benefit remaining in escrow account. D.C. Code 1973, § 12-301. *Hoffa v. Fitzsimmons*, 673 F.2d 1345, 1982 U.S. App. LEXIS 20676 (C.A.D.C. 1982).

The three-year statute of limitations applicable to contract suits in the District of Columbia was applicable to cause of action for alleged breach of contract where, even if choice of law clause in related contract were effective, it would be necessary for court to look not only to the Massachusetts statute of limitations but also to its borrowing statute which would operate to refer the court back to the statute of limitations of the state of plaintiff's residence, i.e., the District of Columbia. D.C. Code § 12-301; *M.G.L.A. c. 260 § 9. Habib v. Raytheon Co.*, 616 F.2d 1204, 1980 U.S. App. LEXIS 21214 (C.A.D.C. 1980).

Where record did not disclose where employment contract, which was subject of employee's suit based on former employer's alleged wrongful refusal to issue shares of common stock in accordance with terms of contract, was made or where contract was to be performed, law of District of Columbia, which was forum where suit was brought, governed determination as to whether action was barred by statute of limitations, as well as all other determinations respecting application of statute. D.C. Code § 12-301(7). *Nyhus v. Travel Management Corp.*, 466 F.2d 440, 1972 U.S. App. LEXIS 7967 (C.A.D.C. 1972).

Statute of limitations applicable to prime contractor's claim to fund held in registry of court, which fund arose as result of sub-subcontractor's suit against subcontractor was that of the forum. D.C. Code §§ 12-301, 12-301(6, 7). *Fox-Greenwald Sheet Metal Co. v. Markowitz Bros., Inc.*, 452 F.2d 1346, 1971 U.S. App. LEXIS 7658 (C.A.D.C. 1971).

Because § 1983 and the statute providing for recovery for neglect to prevent wrongs which a person knows are conspired to be performed do not have any built-in statute of limitations, courts in the District of Columbia apply the three-year statute of limitations imposed by D.C. law. *Philogene v. District of Columbia*, 2012 WL 1893580 (2012).

Florida's five-year statute of limitations for tort and contract actions applied to former client's breach of contract and breach of fiduciary duty claims against attorney and law firm, rather than District of Columbia's three-year statute of limitations for breach of contract and breach of fiduciary claims, since Florida law would have applied had case not been transferred to District of Columbia. *Klayman v.*

Barmak, 602 F.Supp.2d 110, 2009 U.S. Dist. LEXIS 20402 (2009).

Under District of Columbia choice of law rules, District of Columbia statute of limitations applied in District of Columbia resident's diversity products liability action against New York corporation; corporation's statute of limitations argument was procedural, mandating application of forum's statute. *Gassmann v. Eli Lilly & Co.*, 407 F.Supp.2d 203, 2005 U.S. Dist. LEXIS 38112 (2005).

Under District of Columbia law, a statute of limitations is not governed by the law of the forum in instances where limitations is part of the cause of action itself. *Jaffe v. Pallotta TeamWorks*, 276 F.Supp.2d 102, 2003 U.S. Dist. LEXIS 13881 (2003), reversed by, remanded by 374 F.3d 1223, 362 U.S. App. D.C. 398, 2004 U.S. App. LEXIS 14666 (2004).

Under District of Columbia choice-of-law rules, statutes of limitations were procedural, and thus District of Columbia statute of limitations applied to state law claims brought in District under federal district court's supplemental jurisdiction. *Jin v. Ministry of State Sec.*, 254 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 4372 (2003).

Where Virginia resident brought suit in the District of Columbia against corporation which engaged in business both in Virginia and the District of Columbia, based on personal injuries allegedly sustained in a fall in defendant's store in Virginia, Virginia two-year statute of limitations, which would bar the action, would be applied, rather than District of Columbia three-year statute, which would not bar the action, both on the basis of the District of Columbia "interest analysis" approach to conflict of laws and to prevent forum shopping. Code Va.1950, § 8-24; D.C. Code § 12-301. *Farrier v. May Dept's Stores Co.*, 357 F. Supp. 190, 1973 U.S. Dist. LEXIS 13957 (1973).

Common-law right of food company grain inspector, who slipped and fell from railroad car during course of his employment in Tennessee, to bring personal tort action against one other than his employer was neither extinguished nor created by Tennessee Workmen's Compensation Law which places one-year time limit on third-party action following receipt of compensation benefits, and, hence, law of the forum, the District of Columbia, governed timeliness of inspector's action against the railroad, principal home business office of which was in the District of Columbia, claiming breach of duty of care as set forth under Federal Safety Appliance Acts. T.C.A. §§ 28-114, 28-304, 50-901 et seq., 50-914, 50-914 note; D.C. Code § 12-301(8); Safety Appliance Acts, 45 U.S.C. § 1 et seq. *Hodge v. Southern R. Co.*, 415 A.2d 543, 1980 D.C. App. LEXIS 300 (1980).

District of Columbia three-year statute of limitations governed action in the District of

Columbia to recover for breach of home improvement contract to waterproof basement of home located in Maryland. D.C. Code § 12-301(7). *Fowler v. A & A Co.*, 262 A.2d 344, 1970 D.C. App. LEXIS 223 (App. 1970).

Construction and application.

Generally, under District of Columbia law, a cause of action can be brought within the given limitations time period from when the time the right to maintain the action accrues. *Perry v. Scholar*, 696 F.Supp.2d 91, 2010 U.S. Dist. LEXIS 26093 (2010).

The three-year statute of limitations found in District of Columbia Code applies to most Bivens actions, unless the claim is for constitutional torts specifically listed in another provision of the Code. *Bame v. Clark*, 466 F.Supp.2d 105, 2006 U.S. Dist. LEXIS 88894 (2006), dismissed by 2007 U.S. App. LEXIS 13929 (D.C. Cir. June 11, 2007).

Statute of limitations was not strictly applicable to cause of action against labor union or bank where it was breach of trust which they conspired to carry out, and not conspiracy, which was gist of derivative action. D.C. Code § 12-301(8). *Blankenship v. Boyle*, 329 F. Supp. 1089, 1971 U.S. Dist. LEXIS 13548 (1971).

Balancing relevant factors, and recognizing similarity between action in equity and one at law for damages, court in suit for trustees' breaches of trust, participated in by labor union, bank controlled by labor union and various officers would adopt three-year limitation provided by statute as to damages aspect. D.C. Code § 12-301(8). *Blankenship v. Boyle*, 329 F. Supp. 1089, 1971 U.S. Dist. LEXIS 13548 (1971).

Functions of the water and sewer authority, a separate corporate body that was distinct from the District, were proprietary in nature, and thus, the authority was subject to the statute of limitations; therefore, remand was necessary in dispute over unpaid water and sewer bills so that the trial court could determine whether the statute of limitations precluded the authority from collecting on unpaid bills of property owner. *New 3145 Deauville, L.L.C. v. First Am. Title Ins. Co.*, 881 A.2d 624, 2005 D.C. App. LEXIS 463 (2005).

Ambiguity created by "District of Columbia" and "the District of Columbia government" throughout the statutes with no indication whether they were interchangeable or whether they had different meanings in different contexts required examination of other sources, including the legislative history, to interpret statute making time limitations inapplicable to actions brought by the District of Columbia government. *D.C. Water & Sewer Auth. v. Delon Hampton & Assocs.*, 851 A.2d 410, 2004 D.C. App. LEXIS 268 (2004).

District of Columbia Water and Sewer Authority (WASA) was not part of the "District of Columbia government" within the meaning of statute making time limitations inapplicable to actions brought by the District of Columbia government; WASA was suing a private contractor for monetary losses from alleged breach of arm's length contract and negligent performance, and it was a distinctly independent agency established to engage in proprietary activities. *D.C. Water & Sewer Auth. v. Delon Hampton & Assocs.*, 851 A.2d 410, 2004 D.C. App. LEXIS 268 (2004).

Construction with federal law.

District of Columbia's three-year "catch-all" statute of limitations on matters for which a limitation period had not otherwise been prescribed did not apply to employee's claims against employer under Uniformed Services Employment and Reemployment Rights Act (USERRA). *Potts v. Howard Univ. Hosp.*, 598 F.Supp.2d 36, 2009 U.S. Dist. LEXIS 13147 (2009).

Declaratory judgment.

Trial court should not have exercised jurisdiction to render declaratory judgment that any claim of assignors of patent for unpaid royalties was barred by statute of limitations where the patent had expired and the parties contemplated that disputes growing out of the assignment contract would be resolved by an arbitration board. 18 U.S.C. § 2201; 35 U.S.C. §§ 286, 293; D.C. Code § 12-301(7); G.S.N.C. § 1-52. *Hanes Corp. v. Millard*, 531 F.2d 585, 1976 U.S. App. LEXIS 13074 (C.A.D.C. 1976).

Suit by defrauded parties in effect sought declaratory judgment that defrauded parties had complete defense to enforcement of deed of trust against home, and thus defrauded parties were not precluded by three-year statute of limitations from maintaining action to nullify deed of trust which was equitable action, notwithstanding that action was not commenced until more than three years following discovery of fraud. D.C. Code § 12-301. *King v. Kitchen Magic, Inc.*, 391 A.2d 1184, 1978 D.C. App. LEXIS 307 (1978).

Discovery of fraud.

— Constructive notice, discovery of fraud.

One article in business journal challenging accounting procedures of reputable accounting firm was insufficient to impute knowledge of fraud to buyers of securities issued by client of accounting firm and that article thus did not begin running of statute of limitations on securities fraud claim against accounting firm. Securities Exchange Act of 1934, § 10(b) as amended 15 U.S.C. § 78j(b); Securities Act of 1933, § 17(a), 15 U.S.C. § 77q(a); D.C. Code §§ 2-2413(e), 12-301(8). *Wachovia Bank &*

Trust Co., *N. A. v. National Student Marketing Corp.*, 650 F.2d 342, 1980 U.S. App. LEXIS 11694 (C.A.D.C. 1980), writ of certiorari denied by 452 U.S. 954, 101 S. Ct. 3098, 101 S. Ct. 3099, 69 L. Ed. 2d 965, 1981 U.S. LEXIS 2690, 49 U.S.L.W. 3931 (1981).

Testimony of insurance broker, who wrote policy of compensation insurance, that he had informed compensation insurer that claimant had faked claim was not such notice to insurer as to start running of District of Columbia three-year statute of limitations, applicable in action for fraud, with respect to suit instituted by insurer to recover amount paid in reliance on representation that claimant had sustained compensable injury. D.C. Code 1961, § 12-201. *Fontana v. Aetna Casualty & Surety Co.*, 363 F.2d 297, 1966 U.S. App. LEXIS 6020 (C.A.D.C. 1966).

August 16, 1946 contract for sale of land and October 7, 1946 deed identifying the property by lot and square number incorporated means by which purchaser might have ascertained true boundaries and dimensions, and purchaser had constructive notice of public records containing precise metes and bounds of property at a time more than three years prior to his October 10, 1949 filing of action against vendor for fraud and misrepresentation as to location of rear boundary, and hence purchaser was precluded by statute of limitations from maintaining action. D.C. Code 1940, § 12-201. *Robinson v. Orem*, 198 F.2d 86, 1952 U.S. App. LEXIS 3147 (C.A.D.C. 1952).

Investor knew, or reasonably should have known, by no later than November 1984 that subsidiary bank was involved in three-month long churning of brokerage account for which investor brought suit against parent bank, so statute of limitations on state law claims for breach of contract, breach of fiduciary duty, negligence, civil conspiracy, and fraud began to run at that time; investor in November 1984 received from subsidiary copy of "confidential" securities mail register, in which subsidiary recorded receipt of trade confirmation invoices and telexes from brokerage or its agent during three months of alleged churning. D.C. Code 1981, § 12-301(7, 8). *Pyramid Secur., Ltd. v. International Bank*, 726 F. Supp. 1377, 1989 U.S. Dist. LEXIS 15273 (1989), affirmed by 924 F.2d 1114, 288 U.S. App. D.C. 157, 1991 U.S. App. LEXIS 1350, 18 Fed. R. Serv. 3d (Callaghan) 909 (1991).

Limitations period was tolled with respect to former employees' claims for retirement benefits which involved elements of intent or fraud because the former employees could not be held to have been on notice of the facts underlying those claims; however, former employees' claims for benefits due under ERISA, for breach of fiduciary duty of care and for negligence were time barred where they liquidated their plan

accounts and sold their bonus shares more than three years before filing suit. *Employee Retirement Income Security Act of 1974*, § 502(a)(1)(B), (a)(3), 29 U.S.C. § 1132(a)(1)(B), (a)(3); D.C. Code 1981, § 12-301(7, 8). *Richardson v. U.S. News & World Report, Inc.*, 639 F. Supp. 595, 1986 U.S. Dist. LEXIS 23114 (1986).

Fact of precipitous decline in stock within 60 days after buyers' purchase, corporation's loss, ranging from 1.2 to 1.7 million dollars and news articles reporting corporation's financial difficulties in early 1970 was sufficient to alert purchasers of stock of fraud of corporation's officials and attorneys and their involvement in stock sale and, thus, statute of limitations on action alleging securities fraud began to run early in 1970. *Securities Act of 1933*, § 17(a), 15 U.S.C. § 77q(a); *Securities Exchange Act of 1934*, § 10(b), 15 U.S.C. § 78j(b); D.C. Code §§ 2-2413(e), 12-301(8). *Wachovia Bank & Trust Co., N.A. v. National Student Marketing Corp.*, 461 F. Supp. 999, 1978 U.S. Dist. LEXIS 14234 (1978), reversed by 650 F.2d 342, 209 U.S. App. D.C. 9, 1980 U.S. App. LEXIS 11694, Fed. Sec. L. Rep. (CCH) P97712 (1980).

Former patients' fraud claims against psychiatric hospital accrued around the time of their hospitalizations, since patients suspected at that time that hospital's conduct was fraudulent or inappropriate in that it was driven by insurance considerations rather than medical necessity. D.C. Code 1981, § 12-301(8). *Morton v. National Med. Enters.*, 725 A.2d 462, 1999 D.C. App. LEXIS 21 (1999).

Former patients' fraud claims against corporate leaders of psychiatric hospital accrued at time of hospitalization, since patients suspected at that time that the actions of the doctors and hospital staff were influenced by the extent of each patient's insurance coverage, and such concern suggested the intervention of corporate financial considerations in medical decisions. D.C. Code 1981, § 12-301(8). *Morton v. National Med. Enters.*, 725 A.2d 462, 1999 D.C. App. LEXIS 21 (1999).

Practitioner of transcendental meditation (TM) was placed on inquiry notice as to each element of her fraud and fraud-related claims against organizations promoting and teaching TM practices more than three years before she brought suit, based on practitioner's testimony and interrogatory answers regarding organizations' claims about TM, which any reasonable person would recognize as being contrary to common human experience and laws of physics, practitioner acknowledged that at least for some period of time she engaged in deception herself as TM teacher, and medical and health care professionals had imparted sufficient facts and advice to put her on notice that alleged injuries were causally related to practice of TM.

Hendel v. World Plan Exec. Council, 705 A.2d 656, 1997 D.C. App. LEXIS 290 (1997).

Even if law firm that represented plaintiff in prior tax evasion prosecution fraudulently concealed its lawyer-client relationship with business that plaintiff had sued for allegedly wrongfully exercising control over plaintiff's former employer, plaintiff knew or should have known of that relationship more than three years before he filed complaint against firm for, inter alia, fraud and breach of professional and fiduciary duties, and thus, his action was time-barred; plaintiff apparently told another attorney some five years before filing action that plaintiff was aware of firm's relationship with business, and letter that plaintiff wrote nearly four years before filing suit implied that he knew that firm had ongoing lawyer-client relationship with business' officer and, very likely, with business itself. D.C. Code 1981, § 12-301(7). *Diamond v. Davis*, 680 A.2d 364, 1996 D.C. App. LEXIS 310 (1996).

For purposes of principle that three-year limitation period for fraud begins from time when facts from which claim arose are discovered or from time when such facts should have been ascertained by due diligence, fraud is not discovered when one's prior knowledge is confirmed as correct by another. D.C. Code 1951, § 12-201. *Maddox v. Andy's Refrigeration & Motor Service Co.*, 160 A.2d 799, 1960 D.C. App. LEXIS 195 (Cr.App. 1960).

Three-year limitation period for action grounded on fraud begins when facts from which claim arose are discovered or from time when such facts should have been ascertained by due diligence. D.C. Code 1951, § 12-201. *Maddox v. Andy's Refrigeration & Motor Service Co.*, 160 A.2d 799, 1960 D.C. App. LEXIS 195 (Cr.App. 1960).

— Diligence, discovery of fraud.

District of Columbia statute of limitations in actions for fraud begins to run only on discovery of facts out of which claim arises or at time such facts should reasonably be ascertained in exercise of due diligence. D.C. Code 1961, § 12-201. *Fontana v. Aetna Casualty & Surety Co.*, 363 F.2d 297, 1966 U.S. App. LEXIS 6020 (C.A.D.C. 1966).

The three year limitation period provided by statute applicable in District of Columbia to actions for fraud begins only upon discovery of facts out of which the claim of fraud arises, or from time such facts should reasonably have been ascertained in the exercise of due diligence. D.C. Code 1951, § 12-201. *Wiren v. Paramount Pictures*, 206 F.2d 465, 1953 U.S. App. LEXIS 2770 (C.A.D.C. 1953).

District of Columbia statute of limitations does not begin to run until the fraud has been discovered or until the plaintiff by exercise of ordinary care might reasonably have discov-

ered it. D.C. Code § 12-301. *Carmichael v. Egan*, 433 F. Supp. 465, 1977 U.S. Dist. LEXIS 15696 (1977), reversed by 584 F.2d 558, 189 U.S. App. D.C. 400 (1978).

Even though plaintiff acted properly in bringing action within four weeks after discovering alleged fraud arising out of overissue of stock to plaintiff, plaintiff had already relinquished any right of action for fraud by not having exercised "ordinary care" in attempting to discover fraud during the 14-year period between the date he received the stock in 1961 and the death of secretary/treasurer of corporation in late 1975. D.C. Code §§ 12-301, 12-305. *Carmichael v. Egan*, 433 F. Supp. 465, 1977 U.S. Dist. LEXIS 15696 (1977), reversed by 584 F.2d 558, 189 U.S. App. D.C. 400 (1978).

The statute of limitations would not commence to run against an action to recover damages of notary public and surety on his bond caused by alleged wrongful acknowledgment of signature of forged deed by notary, either against notary or surety, until notary's alleged fraud was discovered or should reasonably have been discovered by plaintiff, notwithstanding that it was not charged that surety participated in the alleged fraud. D.C. Code 1940, § 12-201. *Johnson v. Taylor*, 73 F.Supp. 537, 1947 U.S. Dist. LEXIS 2339 (D.D.C.1947).

For statute of limitations purposes, plaintiff alleging fraudulent conduct by defendant has duty at all times to investigate matters affecting her affairs in manner that is reasonable under circumstances. *Diamond v. Davis*, 680 A.2d 364, 1996 D.C. App. LEXIS 310 (1996).

Discovery rule in cases involving fraud and fraudulent concealment is same as in other cases to which discovery rule applies, and thus, plaintiff guilty of ordinary negligence in not earlier discovering cause of action may not avoid bar of statute of limitations merely because fraud or fraudulent concealment is involved; once plaintiff actually knows, or with exercise of reasonable diligence would have known, of some injury, its cause-in-fact, and some evidence of wrongdoing, then she is bound to file her cause of action within applicable limitations period, measured from date of her acquisition of actual or imputed knowledge. *Diamond v. Davis*, 680 A.2d 364, 1996 D.C. App. LEXIS 310 (1996).

Actions involving allegations of fraud must be brought within three years from time fraud either is discovered or reasonably should have been discovered. D.C. Code § 12-301. *King v. Kitchen Magic, Inc.*, 391 A.2d 1184, 1978 D.C. App. LEXIS 307 (1978).

In action in which purchasers sought rescission of settlement agreement pursuant to previous action for breach of contract to sell option warranted to include strip-mining rights to certain land and in which purchasers alleged that vendors' statement that option purchased

did not include strip-mining rights under Pennsylvania law, which statement induced settlement, constituted fraudulent misrepresentation, in view of fact that alleged misrepresentation, in the exercise of due diligence, should have been ascertained when parties entered into settlement agreement, complaint, brought almost four years after parties executed such agreement, was barred by three-year statute of limitations. D.C. Code § 12-301(7, 8). *Doolin v. Environmental Power, Ltd.*, 360 A.2d 493, 1976 D.C. App. LEXIS 315 (1976).

In an action based on fraud, the statute of limitations begins to run, not when the cause of action accrues, but from the discovery of the facts out of which the claim arises, or from the time when the facts should reasonably have been found out in the exercise of due diligence. D.C. Code 1951, § 12-201. *White v. Piano Mart, Inc.*, 110 A.2d 542, 1955 D.C. App. LEXIS 242 (Cr.App. 1955).

When cause of action is based on fraud, statute of limitations begins to run, not when cause of action accrues, but when facts are discovered out of which cause arises, or from time when facts should have reasonably been found out in exercise of due diligence, and it is immaterial whether action is legal or equitable in its nature. *Kraft v. Lowe*, 77 A.2d 554, 1950 D.C. App. LEXIS 208 (Cr.App. 1950).

— In general.

In fraud case, statute of limitations will not begin running until date fraud is discovered, or reasonably should have been. *Kropinski v. World Plan Executive Council-US*, 853 F.2d 948, 1988 U.S. App. LEXIS 10700 (C.A.D.C. 1988).

District of Columbia statutes of limitation are tolled in cases involving misrepresentation, even if that misrepresentation does not hide cause of action itself, until such time as misrepresentations should have been discovered. *Richards v. Mileski*, 662 F.2d 65, 1981 U.S. App. LEXIS 18336 (C.A.D.C. 1981).

Under District of Columbia law, governing fraud or negligent misrepresentation claims, the "discovery rule" provides that once a plaintiff actually knows, or with the exercise of reasonable diligence would have known, of some injury, its cause-in-fact, and some evidence of wrongdoing, then she is bound to file her cause of action within the applicable limitations period, measured from the date of her acquisition of the actual or imputed knowledge. *C&E Servs. v. Ashland, Inc.*, 498 F.Supp.2d 242, 2007 U.S. Dist. LEXIS 55909 (2007).

Statute of limitations for fraud action begins to run under District of Columbia law when fraud is or should have been discovered through plaintiff's due diligence. D.C. Code 1981, § 12-301(8). *Hawkins v. Greenfield*, 797

F. Supp. 30, 1992 U.S. Dist. LEXIS 12484 (1992).

Under District of Columbia law, limitations period governing fraud claims runs from time fraudulent act was or reasonably should have been discovered. D.C. Code 1981, § 12-301(7, 8). *Computer Data Systems, Inc. v. Kleinberg*, 759 F. Supp. 10, 1990 U.S. Dist. LEXIS 18944 (1990).

District of Columbia's three-year limitations period applicable to purchaser's claims of fraud, fraudulent concealment, constructive fraud, punitive damages, and negligent misrepresentation, commenced to run when purchaser of corporation's assets discovered that corporation's president had misrepresented corporation's financial condition, rather than when purchaser sustained completed loss through rescission of stock transfer. D.C. Code 1981, § 12-301(8). *Clouser v. Temporaries, Inc.*, 730 F. Supp. 1127, 1989 U.S. Dist. LEXIS 13274 (1989).

Standard governing plaintiff's duty relating to its potential causes of action is the same in all cases to which discovery rule applies, regardless of presence or absence of fraud, or characterization of that fraud. *Fred Ezra Co. v. Psychiatric Inst.*, 687 A.2d 587, 1996 D.C. App. LEXIS 284 (1996).

Action on fraud claim must be brought within three years of time that fraud is discovered or reasonably should have been discovered. D.C. Code 1981, §§ 12-301(7, 8), 12-302(a)(1). *Interdonato v. Interdonato*, 521 A.2d 1124, 1987 D.C. App. LEXIS 292 (1987).

Cause of action for fraud does not accrue until allegedly defrauded party knows or reasonably should have known a fraud had been committed. *Bailey v. Greenberg*, 516 A.2d 934, 1986 D.C. App. LEXIS 463 (1986).

Where defrauded parties failed to file suit within three years of discovery of fraud, defrauded parties' suit for punitive damages, a legal cause of action based upon breach of contract due to fraud, was properly dismissed as being barred by statute of limitations. D.C. Code § 12-301. *King v. Kitchen Magic, Inc.*, 391 A.2d 1184, 1978 D.C. App. LEXIS 307 (1978).

Applicable statute of limitations begins to run in an action such as fraudulent misrepresentation from the time the parties could have discovered the fraud or misrepresentation. *Doolin v. Environmental Power, Ltd.*, 360 A.2d 493, 1976 D.C. App. LEXIS 315 (1976).

Statute of limitations in action for restitution of money paid for medical benefits began to run when trustees of union welfare fund discovered defendant's misrepresentation of marital status. *Keener v. Walker*, 256 A.2d 779, 1969 D.C. App. LEXIS 309 (App. 1969).

Nothing impeded, at any time, police officer's understanding that police department had failed to perform its obligations under alleged

settlement agreement, and therefore discovery rule did not apply to make timely officer's claim for breach of agreement. *Moore v. District of Columbia*, 445 Fed.Appx. 365, 2011 U.S. App. LEXIS 21965 (C.A.D.C. 2011).

— Inquiry notice, discovery of fraud.

Although a fiduciary relationship between parties does not preclude a finding of inquiry notice, as required under District Columbia's discovery rule, providing that a limitations period is measured from date of actual or imputed knowledge, that is, when plaintiff is on inquiry notice, of fraud or negligent misrepresentation, the nature of the relationship between the parties is highly relevant to whether inquiry notice existed, as to whether reasonable diligence required the plaintiff to suspect wrongdoing on the defendant's part. *C&E Servs. v. Ashland, Inc.*, 498 F.Supp.2d 242, 2007 U.S. Dist. LEXIS 55909 (2007).

Under District of Columbia law, the imputed knowledge component of the discovery rule, providing that limitations period is measured from date of actual or imputed knowledge of fraud or negligent misrepresentation, is referred to as "inquiry notice," and the essential question for whether a plaintiff is on inquiry notice is whether the plaintiff has exercised reasonable diligence under the circumstances in acting or failing to act on whatever information was available to him. *C&E Servs. v. Ashland, Inc.*, 498 F.Supp.2d 242, 2007 U.S. Dist. LEXIS 55909 (2007).

Dismissal.

Issue of whether arrestee's assault and battery claims against police officers were barred by District of Columbia's statute of limitations could not be resolved at motion to dismiss phase because of factual dispute as to whether arrestee was imprisoned following arrest, as would toll limitations period. *Jones v. Ritter*, 587 F.Supp.2d 152, 2008 U.S. Dist. LEXIS 94383 (2008).

District of Columbia as party.

Three-year statute of limitations applied to pretrial detainee's claim against District of Columbia alleging negligent hiring and supervision of police officers with respect utilization of force, even though negligent conduct of District was alleged to have resulted in intentional tort by police. D.C. Code 1981, §§ 12-301, 12-301(4), 12-309. *Hunter v. District of Columbia*, 943 F.2d 69, 1991 U.S. App. LEXIS 20108 (C.A.D.C. 1991).

The District of Columbia is immune from statutes of limitation in suits relating to a public function. *Solid Rock Church v. Friendship Pub. Charter Sch., Inc.*, 925 A.2d 554, 2007 D.C. App. LEXIS 250 (2007).

General three-year statute of limitations governs an appeal to superior court from denial of

refund of taxes. D.C. Code §§ 12-301(8), 47-2403. *Carter-Lanhardt, Inc. v. District of Columbia*, 413 A.2d 916, 1980 D.C. App. LEXIS 277 (1980).

Mother's oral report of her child's injury to security guard assigned to building in public housing project in which she lived did not satisfy requirements of statute requiring notice to mayor of possible litigation against the District of Columbia. D.C. Code §§ 12-301, 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

District of Columbia, which waited five years beyond expiration of three-year statute of limitations which would have barred action against patient if she had been personally sued for cost of hospitalization, was not barred by statute of limitations from recovering such cost in action against patient's estate. D.C. Code 1961, §§ 12-301, 21-586. *Cullen v. District of Columbia*, 221 A.2d 914, 1966 D.C. App. LEXIS 209 (App. 1966).

The District of Columbia government may not change or apply statutes of limitation or repose (D.C. Law 6-202) retroactively in order to extricate itself from litigation already pending on the effective date of the change. *District of Columbia v. Owens-Corning Fiberglass Corp.*, 115 WLR 1905 (Super. Ct. 1987).

Easements.

Fifteen-year statute of limitations governing recovery of lands, tenements, or hereditaments did not apply to action brought by owners of parking facility against university, based on claim that university's law school exceeded square footage limitations under declaration establishing parking easement. D.C. Code 1981, § 12-301(1). *Burka v. Aetna Life Ins. Co.*, 945 F. Supp. 313, 1996 U.S. Dist. LEXIS 16952 (1996).

The 15-year statutory period for a prescriptive easement based on use of "party wall" windows could not begin to run until the property was sold as subdivided property to separate owners. *Hefazi v. Stiglitz*, 862 A.2d 901, 2004 D.C. App. LEXIS 635 (2004).

The burden of establishing use required for the creation of prescriptive easement by a preponderance of the evidence rests upon the claimant. *Hefazi v. Stiglitz*, 862 A.2d 901, 2004 D.C. App. LEXIS 635 (2004).

To establish the existence of a prescriptive easement, property owners must show that their use of adjacent property owner's land was open, notorious, exclusive, continuous, and adverse, and that it was for the statutory period of 15 years. *Hefazi v. Stiglitz*, 862 A.2d 901, 2004 D.C. App. LEXIS 635 (2004).

Easement is property right which may be extinguished by adverse possession. D.C. Code 1981, § 12-301(1). *Smith v. Tippet*, 569 A.2d 1186, 1990 D.C. App. LEXIS 25 (1990).

Effective user to establish a prescriptive easement must be open, notorious, exclusive, continuous, and adverse for a statutory period of 15 years. D.C. Code 1967, §§ 12-301(1), 16-3301; D.C. Code 1981, § 12-301(1). *Chaconas v. Meyers*, 465 A.2d 379, 1983 D.C. App. LEXIS 445 (1983).

In suit by adjoining property owners to establish prescriptive easement for driveway entrance located on property owner's land, evidence that party in possession of adjoining property in 1959 objected to placement of guardrail on correct boundary of land owned by property owners' predecessor in title, that the driveway entrance was subsequently used by adjoining landowners, their tenants, invitees, and employees, and that one of the adjoining property owners regularly repaved the driveway supported conclusion that adverse use of the tract in question was established for the requisite period. D.C. Code § 12-301(1). *Aleotti v. Whitaker Bros. Business Machines, Inc.*, 427 A.2d 919, 1981 D.C. App. LEXIS 226 (1981).

Effect of bar by limitation.

— Actions and other remedies barred, effect of bar by limitation.

Where contract under which plaintiff agreed to identify for defendant's benefit a Saudi Arabian agent/sponsor was severable from agreement that plaintiff would provide advice for defendant's Saudi activities, fact that statute of limitations had run on plaintiff's cause of action for breach of that part of the contract providing for a consultancy relationship did not mean that any cause of action for breach of the commission-splitting portion of the contract was also time barred. D.C. Code § 12-301. *Habib v. Raytheon Co.*, 616 F.2d 1204, 1980 U.S. App. LEXIS 21214 (C.A.D.C. 1980).

— In general.

Where plaintiff, complaining of alleged deprivation of constitutional rights as a result of encounters with District of Columbia police officers, summoned the district court to exercise its legal and equitable jurisdiction concurrently, the District statute of limitations operated to bar her claims for both legal and equitable relief. D.C. Code 1973, § 12-301(4, 8). *Dupree v. Jefferson*, 666 F.2d 606, 1981 U.S. App. LEXIS 17090 (C.A.D.C. 1981).

A time limitation that is an integral part of a substantive statute which creates a right unknown at common law imposes a limitation on the right as well as the remedy, and the right ordinarily would expire if not pursued within the time permitted by its creating statute. *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

— Nature and extent of bar, effect of bar by limitation.

In action claiming royalties under contract, three-year statute of limitations did not bar

claim with respect to royalties which had accrued within three-year period prior to commencement of action, and statute would only bar those quarterly royalty payments that were due and not paid more than three years before plaintiffs brought suit. *Doolin v. Environmental Power, Ltd.*, 360 A.2d 493, 1976 D.C. App. LEXIS 315 (1976).

Where plaintiff's own evidence showed that portion of her claim was barred by statute of limitations, trial court erred in refusing to bar such portion of claim. *Pekofsky v. Blalock*, 175 A.2d 604, 1961 D.C. App. LEXIS 287 (Cr.App. 1961).

— Persons to whom bar available, effect of bar by limitation.

The defense that plaintiff's claim is barred by limitations is a personal privilege and cannot be availed of by party who fails in due time and proper form to invoke its protection. *Atchison & Keller, Inc. v. Taylor*, 51 A.2d 297, 1947 D.C. App. LEXIS 107 (Cr.App. 1947).

Estoppel to rely on limitation.

Defendant cannot avail himself of bar of statute of limitations if it appears that he has done anything that would tend to lull plaintiff into inaction, thereby permitting limitation prescribed by statute to run against him. D.C. Code § 12-301(4, 8). *Alley v. Dodge Hotel*, 551 F.2d 442, 1977 U.S. App. LEXIS 10237 (C.A.D.C. 1977), writ of certiorari denied by 431 U.S. 958, 97 S. Ct. 2684, 53 L. Ed. 2d 277, 1977 U.S. LEXIS 2303 (1977).

Where it appeared from plaintiff's own version of affair that his suit was brought long after expiration of limitation period, it became his burden to establish circumstances erecting asserted estoppel and he was required to show acts or representations of his adversaries causing him, in reliance thereon, to refrain from instituting legal action within limitation period. D.C. Code § 12-301(4, 8). *Alley v. Dodge Hotel*, 551 F.2d 442, 1977 U.S. App. LEXIS 10237 (C.A.D.C. 1977), writ of certiorari denied by 431 U.S. 958, 97 S. Ct. 2684, 53 L. Ed. 2d 277, 1977 U.S. LEXIS 2303 (1977).

In action for assault, in view of incredibility of plaintiff's testimony as to assurances made to him and in view of indefiniteness as to points in time when alleged promises were made, and in view of absence of any evidence that plaintiff relied on assurances to his detriment, plaintiff failed to establish that defendant was estopped to rely upon statute of limitations. D.C. Code § 12-301(4, 8). *Alley v. Dodge Hotel*, 551 F.2d 442, 1977 U.S. App. LEXIS 10237 (C.A.D.C. 1977), writ of certiorari denied by 431 U.S. 958, 97 S. Ct. 2684, 53 L. Ed. 2d 277, 1977 U.S. LEXIS 2303 (1977).

Personal representative of shooting victim was collaterally estopped, under District of

Columbia law, from arguing that Chinese gun manufacturer was equitably estopped from asserting statute of limitations defense in wrongful death action and from challenging dismissal without prejudice of representative's prior claim; representative's argument, that his failure to effect service on manufacturer should have been excused as manufacturer's fault, was fully and fairly litigated in earlier action. *Melara v. China North Industries, Corp.*, 658 F.Supp.2d 178, 2009 U.S. Dist. LEXIS 90137 (2009).

Under the "doctrine of equitable estoppel," a defendant cannot rely on the statute of limitations as a defense if his conduct has lulled the plaintiff into inaction until the statute has expired. *Wiggins v. State Farm Fire & Cas. Co.*, 153 F.Supp.2d 16, 2001 U.S. Dist. LEXIS 11063 (2001).

If equitable estoppel applies, the defendant's conduct postpones the date at which a court will consider the injury to have accrued; the statute of limitations only begins to run once the defendant's wrongful actions to induce a filing delay have ceased. *Wiggins v. State Farm Fire & Cas. Co.*, 153 F.Supp.2d 16, 2001 U.S. Dist. LEXIS 11063 (2001).

Judgment debtor who brought action against judgment creditor for malicious prosecution, alleging that creditor wrongfully obtained default judgment against him, could not show that he relied on creditor's conduct prior to date that default judgment was entered against him, for purpose of tolling limitations period for malicious prosecution under doctrine of equitable estoppel. *Wiggins v. State Farm Fire & Cas. Co.*, 153 F.Supp.2d 16, 2001 U.S. Dist. LEXIS 11063 (2001).

Physician was estopped from availing herself of District of Columbia statute of limitations for medical malpractice actions where statute of limitations expired because physician did not state her true citizenship in a motion to dismiss original complaint, which was subsequently dismissed for lack of complete diversity when it was made known to court after jury had been impaneled that physician was not a United States citizen when complaint was filed, thereby destroying diversity, but instead answered complaint and denied knowledge of facts necessary to respond to plaintiffs' allegations of diversity jurisdiction. D.C. Code 1981, § 12-301(8). *Wymer v. Lessin*, 625 F. Supp. 1286, 1985 U.S. Dist. LEXIS 12443 (1985).

Former employee, alleging breach of contract relative to employer's failure to promote him, continually discussed with employer's vice president of public affairs fact that he did not have an assistant vice president title and that he had not received salary increase he expected, but failed to take any positive action to obtain those benefits; therefore, he did not rely on representations of employer, and thus could

not rely on doctrine of equitable estoppel as defense to assertion of District of Columbia's three-year statute of limitations for bringing breach of contract actions. D.C. Code 1981, § 12-301(7). *Prouty v. National R. Passenger Corp.*, 572 F. Supp. 200, 1983 U.S. Dist. LEXIS 12963 (1983).

Where the defendant has done anything to lull the plaintiff into inaction, thereby affirmatively inducing the plaintiff not to file a timely lawsuit, the defendant may be estopped from asserting the bar of the statute of limitations. *Beard v. Edmondson & Gallagher*, 790 A.2d 541, 2002 D.C. App. LEXIS 15 (2002).

Any misleading conduct by liability insurer after the statute of limitations had lapsed did not estop the insurer from asserting the statute as to parties whose own inaction kept them from filing a timely complaint for breach of contract. D.C. Code 1981, § 12-301(7). *Partnership Placements v. Landmark Ins. Co.*, 722 A.2d 837, 1998 D.C. App. LEXIS 247 (1998).

Both waiver and estoppel can be invoked to preclude a party from asserting the statute of limitations as an affirmative defense. *Partnership Placements v. Landmark Ins. Co.*, 722 A.2d 837, 1998 D.C. App. LEXIS 247 (1998).

Borrower was estopped from asserting three-year statute of limitations as bar to lender's claim for repayment of loan of money which was to be repaid on demand 90 days after issuance, even though borrower made no written request for renewal of the loan within three-year period, where lender's undisputed statement of facts in support of motion for summary judgment stated that loan had been renewed every 90 days at borrower's request and that demand had been made less than three years prior to commencement of suit. D.C. Code 1981, §§ 12-301, 28-3504. *Dilbeck v. Murphy*, 502 A.2d 466, 1985 D.C. App. LEXIS 543 (1985).

Effect of estoppel was not to stop running of three-year statute of limitations in action for damages for alleged breach of contract or to create new date for commencement of running of statute, where there remained well over two years in which to commence action when estoppel ceased. D.C. Code § 12-301(7). *Property 10-F, Inc. v. Pack & Process, Inc.*, 265 A.2d 290, 1970 D.C. App. LEXIS 278 (App. 1970).

Federal court application of state law.

As no specific statute of limitations had ever been enacted by Congress for plaintiff's claim for damages directly under the Constitution, appropriate local statute was three-year limitation of District of Columbia Code. D.C. Code 1973, § 12-301(8). *Richards v. Mileski*, 662 F.2d 65, 1981 U.S. App. LEXIS 18336 (C.A.D.C. 1981).

In diversity cases, substantive law of forum controls with respect to those issues which are

outcome-determinative, and statutes of limitations are of that character. Va.Code 1950, § 8.01-243; D.C. Code § 12-301. *Steorts v. American Airlines, Inc.*, 647 F.2d 194, 1981 U.S. App. LEXIS 20062 (C.A.D.C. 1981).

Question of statute of limitations applicable depends upon forum's choice-of-law rules, which are substantive for Erie purposes. Va.Code 1950, § 8.01-243; D.C. Code § 12-301. *Steorts v. American Airlines, Inc.*, 647 F.2d 194, 1981 U.S. App. LEXIS 20062 (C.A.D.C. 1981).

Under District of Columbia law, question whether action is barred by statute of limitations is procedural and is governed by statute of limitations of the forum. Va.Code 1950, § 8.01-243; D.C. Code § 12-301. *Steorts v. American Airlines, Inc.*, 647 F.2d 194, 1981 U.S. App. LEXIS 20062 (C.A.D.C. 1981).

In diversity action brought for damage allegedly sustained when airliner made emergency landing in Virginia, applicable statute of limitations was three-year statute of District of Columbia wherein suit was brought. Va.Code 1950, § 8.01-243; D.C. Code § 12-301. *Steorts v. American Airlines, Inc.*, 647 F.2d 194, 1981 U.S. App. LEXIS 20062 (C.A.D.C. 1981).

Where the alleged malicious prosecution occurred in the District of Columbia, the District of Columbia statute of limitations governed question whether the suit, which had been removed to federal court, was timely filed. D.C. Code § 12-301. *Shulman v. Miskell*, 626 F.2d 173, 1980 U.S. App. LEXIS 17820 (C.A.D.C. 1980).

District of Columbia one-year limitations statute was applicable to Bivens claims brought by detainee against federal officials, stemming from alleged five-month jail overdetention, since federal claims were analogous to false imprisonment, false arrest, and libel causes of action under District of Columbia law. *Wormley v. United States*, 601 F.Supp.2d 27, 2009 U.S. Dist. LEXIS 14118 (2009).

In diversity action filed in District Court for the District of Columbia by plaintiff, who contracted with cemetery to have her husband buried there, and who brought action against cemetery and funeral director, alleging breach of contract, negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, fraud and/or negligent misrepresentation, breach of implied covenant of good faith, trespass, nuisance, conversion, and professional malpractice, District of Columbia's statute of limitations determined the limitations periods. *Tolbert v. Nat'l Harmony Mem'l Park*, 520 F.Supp.2d 209, 2007 U.S. Dist. LEXIS 82963 (2007).

Under District of Columbia law, two-year limitations period for bringing tort claim against the United States under the Federal Tort Claims Act (FTCA) was not tolled by fraud-

ulent concealment doctrine for child whose injuries were apparent almost immediately after birth, in mother and her son's medical malpractice action against Army medical center staff, where staff's alleged failure to disclose that their negligent actions may have been cause of son's birth defects was a genuine question of medical causation rather than a desire to mislead, and plaintiffs failed to exercise due diligence. *Lewis v. United States*, 173 F.Supp.2d 52, 2001 U.S. Dist. LEXIS 19684 (2001), vacated by 290 F. Supp. 2d 1, 2003 U.S. Dist. LEXIS 23903 (D.D.C. 2003).

Statute of limitations for §§ 1981 suit by railroad workers against railway and union, alleging that they were discriminated against in contracting due to their race, was most closely analogous District of Columbia three year statute, rather than four year federal statute applicable in default of any federal statute of limitations; enactment of civil rights statute predated federal default statute of limitations, and amendment adding rights which post-dated limitations statute referenced pre-existing law. *Campbell v. AMTRAK*, 163 F.Supp.2d 19, 2001 U.S. Dist. LEXIS 13961 (2001).

Issue of appropriate statute of limitations was procedural matter under District of Columbia law, and thus diversity action brought by District of Columbia railroad against Connecticut railroad station for breach of contract would be governed by District of Columbia's three-year statute of limitations for breach of contract and breach of lease claims. 18 U.S.C. § 1332; D.C. Code 1981, §§ 12-301, 12-301(7). *National R. Passenger Corp. v. Notter*, 677 F. Supp. 1, 1987 U.S. Dist. LEXIS 12582 (1987).

In diversity action involving dispute as to validity of issuance of stock certificate, wherein court's concurrent jurisdiction was invoked, court was governed by District of Columbia statute of limitations. D.C. Code § 12-301. *Carmichael v. Egan*, 433 F. Supp. 465, 1977 U.S. Dist. LEXIS 15696 (1977), reversed by 584 F.2d 558, 189 U.S. App. D.C. 400 (1978).

Where Federal Home Loan Bank Board regulation allegedly violated by mortgagee, which required payment of prepayment penalties without express mention thereof in mortgages, was silent on question of limitations, such silence could be interpreted to mean that it was a federal policy to adopt local laws of limitation, and the District of Columbia code provision providing three-year limitation was applicable. Fed.Rules Civ.Proc. rule 23, 18 U.S.C.; D.C. Code §§ 12-301, 12-301(7, 8). *Schmidt v. Interstate Federal Sav. & Loan Assn.*, 74 F.R.D. 423, 1977 U.S. Dist. LEXIS 16422 (1977).

Ignorance of cause of action.

— Civil rights, ignorance of cause of action.

In civil rights action alleging that defen-

dants, members of various police and intelligence organizations, conspired to deprive plaintiffs, opponents of Viet Nam war or proponents of racial justice, of their constitutional rights, although record contained overwhelming and uncontradicted evidence of defendants' efforts to construct a scheme that would remain secret, three plaintiffs were on notice of their claims against members of intelligence organization, not the police defendants, more than three years before filing suit; thus, those particular claims were barred by the District of Columbia statute of limitations. D.C. Code 1981, § 12-301(8). *Hobson v. Wilson*, 737 F.2d 1, 1984 U.S. App. LEXIS 21328 (C.A.D.C. 1984).

To extent that minority truck driver could show that his misperception of his difficulties was justified and that he had good cause not to suspect racial discrimination, he could recover for period before he realized that he had actually been wronged and statute of limitations had begun to run. D.C. Code § 12-301(7, 8). *Macklin v. Spector Freight Systems, Inc.*, 478 F.2d 979, 1973 U.S. App. LEXIS 10026 (C.A.D.C. 1973).

Allegations that violations of civil rights began prior to statute of limitations period and continued into period, are actionable, provided claimants were unaware of discriminatory nature of their treatment until they were within limitations period, and unless they knew about discrimination prior to period and were not subjected to any additional discrimination during period. *Campbell v. AMTRAK*, 163 F.Supp.2d 19, 2001 U.S. Dist. LEXIS 13961 (2001).

Unsuccessful female tenure applicant's claim that university and university administrators violated District of Columbia Human Rights Act (DCHRA) was time-barred, where applicant had knowledge of alleged discriminatory practices of university and administrators well before one year prior to date that applicant filed suit. D.C. Code 1981, § 1-2544(a). *Paul v. Howard Univ.*, 754 A.2d 297, 2000 D.C. App. LEXIS 116 (2000).

Employee's general knowledge that her termination was improper was enough to require her to seek legal assistance, and employee's failure to seek such advice did not toll the District of Columbia Human Rights Act's (DCHRA) one year statute of limitations under the discovery rule; discovery rule did not apply to case because focus of rule was on when employee gained general knowledge that her firing was wrongful, and not on when she learned of precise legal remedies for firing. D.C. Code 1981, § 1-2544. *East v. Graphic Arts Indus. Joint Pension Trust*, 718 A.2d 153, 1998 D.C. App. LEXIS 189 (1998).

Homosexual patient's claim that Human Immuno-deficiency Virus (HIV) test was given without his informed consent and because of

his sexual orientation did not accrue, for purposes of statute of limitations under Human Rights Act, until HIV analysis was actually performed on blood sample. D.C. Code 1981, § 1-2544(a). *John Doe v. District of Columbia Com. on Human Rights*, 624 A.2d 440, 1993 D.C. App. LEXIS 93 (1993).

— Contracts or warranties, ignorance of cause of action.

Under District of Columbia law, investor's common-law claims of fraud, negligence, civil conspiracy, breach of contract, and breach of fiduciary duty against bank, based upon conduct of bank's subsidiary, while performing bookkeeping and clearinghouse functions for investor, in relation to broker's churning of investor's account, accrued for limitations purposes when investor received ledger in which someone at subsidiary hand-recorded trades made in investor's account at time of churning, as indicated in owner's prior sworn statement, notwithstanding owner's attempted repudiation of that statement. D.C. Code 1981, § 12-301(7, 8). *Pyramid Secur., Ltd. v. IB Resolution, Inc.*, 924 F.2d 1114, 1991 U.S. App. LEXIS 1350 (C.A.D.C. 1991), writ of certiorari denied by 502 U.S. 822, 112 S. Ct. 85, 116 L. Ed. 2d 57, 1991 U.S. LEXIS 5613, 60 U.S.L.W. 3258 (1991).

Under District of Columbia code provision that cause of action for breach of contract accrues when breach occurs, regardless of aggrieved party's lack of knowledge, discovery rule is not applicable to breach of warranty claim. D.C. Code 1981, § 28:2-725. *Hull v. Eaton Corp.*, 825 F.2d 448, 1987 U.S. App. LEXIS 10361 (C.A.D.C. 1987).

In action for breach of implied warranty to do workmanlike job in insulating plaintiff's home against termites in which plaintiff alleged that holes which defendant had drilled in cement floor of basement and had refilled with cement had damaged tile drain beneath floor resulting in dampness in the basement, and that plaintiff did not discover the damage until leakage made dampness visible, statute of limitations began to run from time of breach rather than from time of discovery, in absence of actual or constructive fraud. D.C. Code 1951, § 12-201. *Poole v. Terminix Co. of Md. & Wash.*, 200 F.2d 746, 1952 U.S. App. LEXIS 2359 (C.A.D.C. 1952).

Representative should have known of construction company's culpability in bid rigging scheme, triggering statute of limitations on fraud claim under District of Columbia law, as result of nature of her duties, which involved negotiating resolution of contracting matters that signaled possibility of bid rigging. *Elemery v. Holzmman*, 533 F.Supp.2d 116, 2008 U.S. Dist. LEXIS 8265 (2008), transfer denied by 533 F. Supp. 2d 144, 2008 U.S. Dist. LEXIS 8238 (D.D.C. 2008).

Under District of Columbia law, statute of limitations governing employee's claim against employer for breach of licensing agreement accrued when employee knew or should have known that employer breached agreement by selling "package" that included employee's software and purportedly discounted royalties due employee. D.C. Code 1981, § 12-301(7, 8). *Computer Data Systems, Inc. v. Kleinberg*, 759 F. Supp. 10, 1990 U.S. Dist. LEXIS 18944 (1990).

Even assuming purported purchaser of undivided one-half interest in residential real property was not aware deed was not in fact executed by one of the purported vendors until ruling of Office of the Secretary of the District of Columbia to that effect, purchaser was required to file her action for breach of contract within three-year statute of limitations, rather than 13 years after ruling. *LaPrade v. Rosinsky*, 882 A.2d 192, 2005 D.C. App. LEXIS 467 (2005).

Discovery exception did not toll running of statute of limitations so as to permit developer to demand arbitration under construction contract provision stating that demand for arbitration could not be made "after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations" where developer was major national organization, developer had extensive knowledge of commercial construction, developer had architect on its staff to oversee construction of building, developer hired expert to inspect leakage in building, problems with building began manifesting themselves almost immediately, tenants complained of water infiltration and efflorescence more than three years before developer filed its demand, and cracks to building's facade and shifting facade were observed more than three years before developer filed its demand. *Capitol Place I Assocs. L.P. v. George Hyman Constr. Co.*, 673 A.2d 194, 1996 D.C. App. LEXIS 46 (1996).

Testator's widow and son were on notice that testator's brother was not going to keep his promise to provide for son throughout his life no later than 1973, when son inquired about obtaining some money from trust fund to pay off bank loan and was told that brother would not give him anything unless he dismissed his pending suit against uncle in Maryland, for limitations purposes. D.C. Code 1981, §§ 12-301(7, 8), 12-302(a)(1). *Interdonato v. Interdonato*, 521 A.2d 1124, 1987 D.C. App. LEXIS 292 (1987).

Discovery rule may appropriately be applied to action based on breach of contract and warranty. *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1984 D.C. App. LEXIS 554 (1984).

Running of statute of limitations was not to be hinged upon complete ascertainability of lost profits, in view of fact that extra costs and loss

of profits were measure of damages, and these were susceptible of proof, and thus plaintiff in suit for delay in construction project occasioned by defendant's subterranean trespass was properly not allowed recovery on its claim for first six days of delay. D.C. Code § 12-301(3). *John McShain, Inc. v. L'Enfant Plaza Properties, Inc.*, 402 A.2d 1222, 1979 D.C. App. LEXIS 380 (1979).

One who knew that his contract for repair of his property was breached because he had knowledge that his property remained in state of disrepair could not wait more than the three-year limitation period to assert his remedy. D.C. Code 1951, § 12-201. *Maddox v. Andy's Refrigeration & Motor Service Co.*, 160 A.2d 799, 1960 D.C. App. LEXIS 195 (Cr.App. 1960).

— Diseases or drug-related injuries, ignorance of cause of action.

Manifestation of any asbestos-related disease does not trigger running of statute of limitations on all separate, distinct, and later-manifested diseases engendered by same asbestos exposure; time to commence litigation on separate and distinct disease does not begin to run until that disease becomes manifest. D.C. Code 1981, § 12-301(8). *Wilson v. Johns-Manville Sales Corp.*, 684 F.2d 111, 1982 U.S. App. LEXIS 16975 (C.A.D.C. 1982).

Diagnosis of mild asbestosis received by worker in February of 1973 did not start clock on his right to sue for separate and distinct disease, mesothelioma, which was attributable to same asbestos exposure but did not manifest itself until February, 1978. D.C. Code 1981, § 12-301(8). *Wilson v. Johns-Manville Sales Corp.*, 684 F.2d 111, 1982 U.S. App. LEXIS 16975 (C.A.D.C. 1982).

Under District of Columbia law, former smoker's purported awareness of her addiction to cigarettes, the health hazards of cigarettes, and of manufacturers' silence with respect to those hazards was not sufficient evidence of wrongdoing to charge her with "inquiry notice" of fraud claim at time of her throat cancer diagnosis, because it provided smoker with no indication that manufacturers were deliberately concealing information in order to deceive public. *Smith v. Brown & Williamson Tobacco Corp.*, 108 F.Supp.2d 12, 2000 U.S. Dist. LEXIS 11574 (2000).

Under District of Columbia law, products liability action against cigarette manufacturers accrued when plaintiffs knew or by exercise of reasonable diligence should have known of smoker's injury, its cause in fact, and some wrongdoing by manufacturers. D.C. Code 1981, § 12-301(8). *Smith v. Brown & Williamson Tobacco Corp.*, 3 F.Supp.2d 1473, 1998 U.S. Dist. LEXIS 8848 (1998).

Under District of Columbia law, smoker's products liability claims against cigarette man-

ufacturers accrued, at the latest, when smoker was diagnosed with throat cancer; smoker had previously been diagnosed with emphysema, and cigarette packages and billboard advertisements had carried warning that smoking could cause lung cancer and emphysema. D.C. Code 1981, § 12-301(8). *Smith v. Brown & Williamson Tobacco Corp.*, 3 F.Supp.2d 1473, 1998 U.S. Dist. LEXIS 8848 (1998).

Even under discovery rule, District of Columbia's three-year limitations period applicable to personal injury action of recipient of blood contaminated with human immunodeficiency virus (HIV) began to run no later than date on which recipient learned of contaminated blood and that he had tested HIV-positive. D.C. Code 1981, § 12-301(8). *Nelson v. American Nat'l Red Cross*, 815 F. Supp. 501, 1993 U.S. Dist. LEXIS 3145 (1993), affirmed in part and reversed in part by 26 F.3d 193, 307 U.S. App. D.C. 52, 1994 U.S. App. LEXIS 16163 (1994).

Three-year limitations period on causes of action, sounding in negligence, breach of warranty, products liability and fraud, to recover from drug manufacturer for hearing loss allegedly caused by use of drug Aralen over a long-term as an antimalarial prophylaxis began to run from time the user learned, or on exercise of due diligence could have learned, that her injuries were not simply misfortune that resulted from an undisclosed defect in the product. D.C. Code § 12-301(8). *Grigsby v. Sterling Drug, Inc.*, 428 F. Supp. 242, 1975 U.S. Dist. LEXIS 11278 (1975), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

One is deemed to be on "inquiry notice" of an injury, its cause, and some evidence of wrongdoing, for purposes of a computing period of statute of limitations in a medical malpractice action, if, in meeting one's responsibility to act reasonably under the circumstances in investigating matters affecting one's affairs, such an investigation, if conducted, would have led to actual notice. *Berkow v. Hayes*, 841 A.2d 776, 2004 D.C. App. LEXIS 41 (2004).

— Health care malpractice, ignorance of cause of action.

Where legal or medical injury is not readily apparent, District of Columbia courts follow "discovery" rule which tolls running of statute of limitations until plaintiff-client discovers or reasonably should have discovered her injury. D.C. Code 1981, § 12-301. *Byers v. Bursleson*, 713 F.2d 856, 1983 U.S. App. LEXIS 25170 (C.A.D.C. 1983).

Action, which was instituted in December, 1969, and in which recovery was sought for alleged negligent performance of surgery on plaintiff's decedent in October of 1966 that was alleged to have resulted in decedent's death in April, 1967, was not barred by District of Columbia's general three-year statute of limita-

tions, if, as alleged by plaintiff, alleged negligence was not discovered until decedent took sick week before his death. D.C. Code §§ 12-301, 12-301(8). *Jones v. Rogers Memorial Hospital*, 442 F.2d 773, 1971 U.S. App. LEXIS 12055 (C.A.D.C. 1971).

Medical malpractice action alleging that physician failed to properly perform sterilization procedure on female plaintiff resulted in pregnancy was barred by District of Columbia three-year statute of limitations, since plaintiffs filed suit more than three years after plaintiffs learned of the pregnancy. *Stewart v. Bepko*, 576 F. Supp. 182, 1983 U.S. Dist. LEXIS 14001 (1983), affirmed without opinion by 735 F.2d 617, 236 U.S. App. D.C. 351 (1984).

When foreign object is left in patient's wound at close of surgical operation, statute of limitations governing action against physician begins to run when patient becomes aware, or should have become aware of what had happened, and not at moment when surgeon closes wound with foreign object abandoned inside. D.C. Code § 12-301(8). *Burke v. Washington Hospital Center*, 293 F. Supp. 1328, 1968 U.S. Dist. LEXIS 8168 (D.D.C.1968).

It is only when the patient is acquainted with the problem that in fact exists, by the physician or by untoward developments that alert any diligent patient, that his medical malpractice cause of action accrues. *Hardi v. Mezzanotte*, 818 A.2d 974, 2003 D.C. App. LEXIS 140 (2003).

Fact that patient may have reported to police that chiropractor raped her did not demonstrate, as a matter of law, that patient was substantially aware of her legal rights, including any civil cause of action that may have been available to her, at the time of the alleged incidents, so as to preclude tolling of statute of limitations on sexual assault claim against chiropractor. D.C. Code 1981, § 12-301(4). *McCracken v. Walls-Kaufman*, 717 A.2d 346, 1998 D.C. App. LEXIS 170 (1998).

Medical malpractice action accrues, for purposes of statute of limitations, when injured party knows or should have known that she has suffered injury as result of defendants' negligence. *Moattar v. Foxhall Surgical Assocs.*, 694 A.2d 435, 1997 D.C. App. LEXIS 80 (1997).

Medical malpractice action accrued, and three-year statute of limitations began to run, when surgeon informed patient's spouse that mastectomy, rather than lumpectomy, should have been performed and that chances of survival decreased from 90% to 10%, not when cancer was found in patient's spine and hip; patient and spouse were on inquiry notice of probability of metastasis, damages were sought for radiation burns, prophylactic mastectomy, pain and suffering, and emotional distress before metastasis, and patient already suffered grievous injury before metastasis. D.C. Code

1981, § 12-301(8). *Colbert v. Georgetown Univ.*, 641 A.2d 469, 1994 D.C. App. LEXIS 66 (1994).

Under discovery rule, medical malpractice claim accrues when patient discovers or reasonably should have discovered all essential elements of possible cause of action, i.e., duty, breach, causation, damages. D.C. Code 1981, § 12-301(8). *Colbert v. Georgetown Univ.*, 641 A.2d 469, 1994 D.C. App. LEXIS 66 (1994).

Action for dental malpractice must be brought within three years of time of injury or within three years from time injured party knew or should have known of injury. D.C. Code 1981, § 12-301(8). *Allen v. Hill*, 626 A.2d 875, 1993 D.C. App. LEXIS 138 (1993).

Patient's cause of action accrued no later than August 1987, so that her September 1990 action for dental malpractice was barred by three-year statute of limitations; patient learned in July 1987 that pain following root canal by defendant dentist was caused by overfill and learned in August 1987 that surgery was necessary to remove carcinogen used in root canal, and her decision not to have corrective surgery until November 1987 did not alter fact that statute of limitations began to run when she learned full extent of her injury in August 1987. D.C. Code 1981, § 12-301(8). *Allen v. Hill*, 626 A.2d 875, 1993 D.C. App. LEXIS 138 (1993).

Dental malpractice cause of action against university whose dental school had treated patient would not accrue until patient "discovered" evidence of dental school's alleged wrongdoing through private dentist's examination, and suit filed within three years of that time would not be time barred. D.C. Code 1981, § 12-301(8). *Bussineau v. President & Directors of College*, 518 A.2d 423, 1986 D.C. App. LEXIS 487 (1986).

Patient's cause of action for medical malpractice did not accrue until date on which she knew or by exercise of due diligence should have known of injury. *Stager v. Schneider*, 494 A.2d 1307, 1985 D.C. App. LEXIS 423 (1985).

In all medical malpractice actions, cause of action accrues when plaintiff knows or through exercise of due diligence should have known of injury. *Burns v. Bell*, 409 A.2d 614, 1979 D.C. App. LEXIS 488 (1979).

— In general.

Under District of Columbia law, plaintiff's cause of action ordinarily accrues at time he suffers injury alleged, but discovery rule will be employed to determine when limitations period begins to run if relationship between fact of injury and tortious conduct is obscure at time of injury. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193, 1994 U.S. App. LEXIS 16163 (C.A.D.C. 1994).

Under discovery rule of District of Columbia law, cause of action accrues at time plaintiff

must know or by exercise of reasonable diligence should know of injury, its cause in fact, and evidence of wrongdoing. *Nelson v. American Nat'l Red Cross*, 26 F.3d 193, 1994 U.S. App. LEXIS 16163 (C.A.D.C. 1994).

Statute of limitations begins to run at time when prospective plaintiff knows or should know through exercise of due diligence of his rights to recover. *Kropinski v. World Plan Executive Council-US*, 853 F.2d 948, 1988 U.S. App. LEXIS 10700 (C.A.D.C. 1988).

Under District of Columbia law, plaintiff is deemed to be on inquiry notice, triggering running of statute of limitations, when, if she had met her duty to act reasonably under circumstances in investigating matters affecting her affairs, such investigation, if conducted, would have led to actual notice. *Gassmann v. Eli Lilly & Co.*, 407 F.Supp.2d 203, 2005 U.S. Dist. LEXIS 38112 (2005).

Under discovery rule of District of Columbia statute of limitations, plaintiff's claim does not accrue, and limitations period does not begin to run, until plaintiff knows, or by exercise of reasonable diligence should know, of: (1) injury; (2) its cause in fact; and (3) some evidence of wrongdoing. *Gassmann v. Eli Lilly & Co.*, 407 F.Supp.2d 203, 2005 U.S. Dist. LEXIS 38112 (2005).

Discovery rule of District of Columbia statute of limitations is applicable when relationship between fact of injury and alleged tortious conduct is obscure. *Gassmann v. Eli Lilly & Co.*, 407 F.Supp.2d 203, 2005 U.S. Dist. LEXIS 38112 (2005).

Under District of Columbia law, where the discovery rule is applicable, in order for the cause of action to accrue for limitations purposes, one must know, or by the exercise of reasonable diligence should know, (1) of the injury, (2) its cause in fact and (3) of some evidence of wrongdoing. *Reeves v. Eli Lilly & Co.*, 368 F.Supp.2d 11, 2005 U.S. Dist. LEXIS 3957 (2005).

Under District of Columbia law, statute of limitations may be tolled until plaintiff realizes the impact of the harm he suffered. *Nwachukwu v. Karl*, 223 F.Supp.2d 60, 2002 U.S. Dist. LEXIS 16384 (2002).

Under discovery rule, statute of limitations does not run with respect to specific claim until plaintiff discovers or reasonably should have discovered facts necessary to assert that claim. *Stith v. Chadbourne & Parke, LLP*, 160 F.Supp.2d 1, 2001 U.S. Dist. LEXIS 12857 (2001).

The discovery rule emerged to redress situations in which the fact of injury was not readily apparent and indeed might not become apparent for several years after the incident causing injury had occurred. *Wiggins v. State Farm Fire & Cas. Co.*, 153 F.Supp.2d 16, 2001 U.S. Dist. LEXIS 11063 (2001).

District of Columbia courts apply discovery rule to determine when cause of action accrues, absent equitable tolling. *Williams v. Central Money Co.*, 974 F. Supp. 22, 1997 U.S. Dist. LEXIS 11088 (1997).

For a cause of action to accrue where the discovery rule is applicable, one must know or by the exercise of reasonable diligence should know of the injury, its cause in fact, and of some evidence of wrongdoing. *Brown v. NAS*, 844 A.2d 1113, 2004 D.C. App. LEXIS 71 (2004).

A claim usually accrues for statute of limitations purposes when injury occurs, but in cases where the relationship between the fact of injury and the alleged tortious conduct is obscure, the court determines when the claim accrues through application of the "discovery rule," i.e., the statute of limitations will not run until plaintiffs know or reasonably should have known that they suffered injury due to the defendants' wrongdoing. *Doe v. Medlantic Health Care Group, Inc.*, 814 A.2d 939, 2003 D.C. App. LEXIS 2 (2003).

In order for a statute of limitations to begin to run, it is only necessary that the plaintiff have inquiry notice of the existence of a cause of action. *Ray v. Queen*, 747 A.2d 1137, 2000 D.C. App. LEXIS 60 (2000).

In all cases to which the discovery rule applies to determine when a cause of action accrues for purposes of a statute of limitations, the inquiry is highly fact-bound and requires an evaluation of all of the plaintiff's circumstances. *Ray v. Queen*, 747 A.2d 1137, 2000 D.C. App. LEXIS 60 (2000).

For a cause of action to accrue where the discovery rule is applicable, one must know or by the exercise of reasonable diligence should know: (1) of the injury; (2) its cause in fact; and (3) of some evidence of wrongdoing. *Morton v. National Med. Enters.*, 725 A.2d 462, 1999 D.C. App. LEXIS 21 (1999).

Discovery rule does not permit a plaintiff who has information regarding a defendant's negligence, and who knows that she has been significantly injured, to defer institution of suit and wait and see whether additional injuries come to light. *Morton v. National Med. Enters.*, 725 A.2d 462, 1999 D.C. App. LEXIS 21 (1999).

Under both general rule of claim accrual and discovery rule exception, statute of limitations begins to run when plaintiff either has actual knowledge of cause of action or is charged with knowledge of that cause of action. *Cevenini v. Archbishop of Washington*, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Plaintiff can be charged with inquiry notice of his claims, for statute of limitations purposes, even if he is not actually aware of each essential element of his cause of action. *Cevenini v. Archbishop of Washington*, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Discovery rule does not give plaintiff carte blanche to defer legal action indefinitely if she knows or should know that she may have suffered injury and that defendant may have caused her harm. *Hendel v. World Plan Exec. Council*, 705 A.2d 656, 1997 D.C. App. LEXIS 290 (1997).

Right of action may accrue before plaintiff becomes aware of all of relevant facts. *Hendel v. World Plan Exec. Council*, 705 A.2d 656, 1997 D.C. App. LEXIS 290 (1997).

Law of limitations requires only that plaintiff have inquiry notice of existence of cause of action. *Hendel v. World Plan Exec. Council*, 705 A.2d 656, 1997 D.C. App. LEXIS 290 (1997).

For purposes of determining accrual of cause of action, question is whether plaintiff filed its claim within three years of the time it knew, or through the exercise of reasonable diligence should have known, of its claim. *Fred Ezra Co. v. Psychiatric Inst.*, 687 A.2d 587, 1996 D.C. App. LEXIS 284 (1996).

Once plaintiff actually knows, or with exercise of reasonable diligence would have known, of some injury, its cause-in-fact, and some evidence of wrongdoing, then it is bound to file its cause of action within the applicable limitations period, measured from date of its acquisition of the actual or imputed knowledge. *Fred Ezra Co. v. Psychiatric Inst.*, 687 A.2d 587, 1996 D.C. App. LEXIS 284 (1996).

There are two types of "notice" for statute of limitations purposes: "actual notice" is that notice which plaintiff actually possesses; "inquiry notice" is that notice which plaintiff would have possessed after due investigation. *Diamond v. Davis*, 680 A.2d 364, 1996 D.C. App. LEXIS 310 (1996).

Once either actual or inquiry notice is present, statute of limitations begins to run as matter of law. *Diamond v. Davis*, 680 A.2d 364, 1996 D.C. App. LEXIS 310 (1996).

If existence of injury is not readily apparent, claim does not accrue until plaintiff, exercising due diligence, has discovered or reasonably should have discovered all essential elements of her possible cause of action, such as duty, breach, causation and damages. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Under discovery rule, determination as to when claim accrues has been guided by considerations of basic fairness; legislature should not be presumed to have intended to deny day in court to plaintiff who did not know, and could not reasonably have known, of her injury at time that it occurred, provided that she filed suit in timely fashion after she learned or should have learned the facts. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Discovery rule was developed to redress situations in which fact of injury was not readily

apparent and indeed might not become apparent for several years after incident causing injury had occurred; claimant should not be penalized because he has had complicating misfortune of not realizing that he has in fact been victimized by tort-feasor. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Where fact of injury can be readily determined, claim accrues for purposes of statute of limitations at time that injury actually occurs. *Colbert v. Georgetown Univ.*, 641 A.2d 469, 1994 D.C. App. LEXIS 66 (1994).

Statute of limitations begins to run when facts which form basis of claim are discovered, or reasonably should have been discovered, in exercise of due diligence. *Interdonato v. Interdonato*, 521 A.2d 1124, 1987 D.C. App. LEXIS 292 (1987).

For cause of action to accrue where discovery rule is applicable, one must know or by exercise of reasonable diligence should know of injury, of its cause in fact, and of some evidence of wrongdoing; declining to follow *United States v. Kubrick*, 444 U.S. 111, 100 S.Ct. 352, 62 L.Ed.2d 259. *Bussineau v. President & Directors of College*, 518 A.2d 423, 1986 D.C. App. LEXIS 487 (1986).

— Injuries to person, ignorance of cause of action.

Limitations period applicable under District of Columbia law to former gubernatorial candidate's invasion of privacy claim against hotel in connection with hotel's alleged disclosure of candidate's hotel receipt to reporter began no later than date on which candidate wrote hotel to inquire about whether confidential information had been disclosed. D.C. Code 1981, § 12-301(4). *Grunseth v. Marriott Corp.*, 872 F. Supp. 1069, 1995 U.S. Dist. LEXIS 6391 (1995), affirmed by 1996 U.S. App. LEXIS 3688 (D.C. Cir. Feb. 9, 1996).

Under District of Columbia law, statute of limitations governing personal injury claims of two sisters against their older brother, for allegedly having sexually abused them during their childhood and adolescent years while growing up together approximately 25 years earlier, was not tolled during period that sisters allegedly repressed all recollection of their ordeal; resultant injury was purely psychic in nature, and was not perpetrated by person in loco parentis upon whose superior knowledge sisters could rely. D.C. Code 1981, § 12-301. *Farris v. Compton*, 802 F. Supp. 487, 1992 U.S. Dist. LEXIS 15145 (1992), reversed without opinion at 84 F.3d 1452, 318 U.S. App. D.C. 78, 1996 U.S. App. LEXIS 41834 (1996).

Under District of Columbia law, the "discovery rule" exception to three-year statute of limitations was available to plaintiff who claimed that adverse psychological effects of

defendants' psychological training program prevented her from realizing nature and source of her problems during years following her participation in the training, notwithstanding that defendants were not licensed psychologists or psychiatrists. D.C. Code 1981, § 12-301. *Shamloo v. Lifespring, Inc.*, 713 F. Supp. 14, 1989 U.S. Dist. LEXIS 10740 (1989).

Where in two-year period ending in October of 1968 plaintiff took 500 milligrams per week of Aralen, in August 1968 she became dizzy and nauseated and had a feeling that her ears were stuffed with cotton and her hearing was suppressed and distorted and on consulting with a specialist shortly thereafter was advised that cause of hearing loss was chloroquine toxicity, i.e., the drug, suit against manufacturer based on theories of negligence, breach of warranty and products liability was barred by three-year limitations period where complaint was not filed until August 1974; in 1968 plaintiff knew, or through exercise of due diligence, should have known that she had a claim that her hearing problem was caused by the drug. D.C. Code § 12-301(8). *Grigsby v. Sterling Drug, Inc.*, 428 F. Supp. 242, 1975 U.S. Dist. LEXIS 11278 (1975), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

For purposes of a computing period of statute of limitations in a medical malpractice action, a plaintiff's knowledge an injury, its cause, and some evidence of wrongdoing, includes not only actual notice but also inquiry notice. *Berkow v. Hayes*, 841 A.2d 776, 2004 D.C. App. LEXIS 41 (2004).

Under the discovery rule, a medical malpractice claim does not accrue until the patient has discovered or reasonably should have discovered all of the essential elements of her possible cause of action, i.e., duty, breach, causation and damages. *Hardi v. Mezzanotte*, 818 A.2d 974, 2003 D.C. App. LEXIS 140 (2003).

For a cause of action to accrue where the discovery rule is applicable, one must know or by the exercise of reasonable diligence should know (1) of the injury, (2) its cause in fact, and (3) of some evidence of wrongdoing; inquiry notice of the possible cause of action will suffice to start the running of the clock. *Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

Parishioner who alleged that priest sexually molested him when he was teenager and that, because of trauma of molestation, he repressed his memory of sexual abuse until certain date was on inquiry notice of his claims against priest as of this date, and because he brought claims four years after this date, his claims were barred by three-year statute of limitations; accrual of statute of limitations was not tolled until parishioner fully appreciated full impact of priest's misconduct. D.C. Code 1981, § 12-301(8). *Cevenini v. Archbishop of Wash-*

ington, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Parishioners who alleged that they were sexually molested by priest when they were teenagers had inquiry notice of their claims when they turned eighteen, and because they brought their claims more than 10 years after they turned eighteen, their claims were barred by three-year statute of limitations; according to their complaints, when they turned eighteen, they were fully aware of their injuries, their cause in fact, and some evidence of wrongdoing, and thus, they had minimum quantum of knowledge necessary to be charged with inquiry notice. D.C. Code 1981, §§ 12-301(8), 12-302(a)(1). *Cevenini v. Archbishop of Washington*, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Parishioners' claims against archdiocese accrued, for statute of limitations purposes, simultaneously with their claims against priest who allegedly sexually abused them; they were aware from outset that it was archdiocese that had assigned priest to church and that priest's role was that of subordinate representative of archdiocese, alleged acts of abuse occurred on church premises while priest was functioning as representative of archdiocese, and there was no evidence of fraudulent concealment by archdiocese. *Cevenini v. Archbishop of Washington*, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Parishioner who alleged that priest sexually molested him when he was teenager and that, because of trauma of molestation, he repressed his memory of sexual abuse until certain date was on inquiry notice of his claims against priest as of this date, and because he brought claims four years after this date, his claims were barred by three-year statute of limitations; accrual of statute of limitations was not tolled until parishioner fully appreciated full impact of priest's misconduct. D.C. Code 1981, § 12-301(8). *Cevenini v. Archbishop of Washington*, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Parishioners who alleged that they were sexually molested by priest when they were teenagers had inquiry notice of their claims when they turned eighteen, and because they brought their claims more than 10 years after they turned eighteen, their claims were barred by three-year statute of limitations; according to their complaints, when they turned eighteen, they were fully aware of their injuries, their cause in fact, and some evidence of wrongdoing, and thus, they had minimum quantum of knowledge necessary to be charged with inquiry notice. D.C. Code 1981, §§ 12-301(8), 12-302(a)(1). *Cevenini v. Archbishop of Washington*, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Parishioners' claims against archdiocese accrued, for statute of limitations purposes, si-

multaneously with their claims against priest who allegedly sexually abused them; they were aware from outset that it was archdiocese that had assigned priest to church and that priest's role was that of subordinate representative of archdiocese, alleged acts of abuse occurred on church premises while priest was functioning as representative of archdiocese, and there was no evidence of fraudulent concealment by archdiocese. *Cevenini v. Archbishop of Washington*, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

Defendant's contention that his opportunity to present his defense had been severely prejudiced by passage of time did not preclude application of discovery rule to suit by defendant's sisters, alleging sexual abuse by defendant 25 to 40 years earlier; fundamental complaint of lost witnesses and impaired memories was common to all cases in which running of statute of limitations had been deferred or interrupted, and in each case, considerations of staleness were trumped by unfairness of requiring plaintiffs to sue at time when, through no fault of their own, injury was not apparent and they could not reasonably have known about it. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

To maintain claim of sexual abuse against defendant for conduct allegedly occurring 20 to 40 years earlier, plaintiff was required to establish that her repression of any memory of alleged sexual abuse was "blameless." D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Defendant's contention that his opportunity to present his defense had been severely prejudiced by passage of time did not preclude application of discovery rule to suit by defendant's sisters, alleging sexual abuse by defendant 25 to 40 years earlier; fundamental complaint of lost witnesses and impaired memories was common to all cases in which running of statute of limitations had been deferred or interrupted, and in each case, considerations of staleness were trumped by unfairness of requiring plaintiffs to sue at time when, through no fault of their own, injury was not apparent and they could not reasonably have known about it. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

To maintain claim of sexual abuse against defendant for conduct allegedly occurring 20 to 40 years earlier, plaintiff was required to establish that her repression of any memory of alleged sexual abuse was "blameless." D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Statute of limitations for maintaining action under Compulsory No-Fault Motor Vehicle Insurance Act begins to run when injured party knows, or exercising reasonable diligence should know, that party qualifies under one of six exceptions in Act, rather than on date of

injury. D.C. Code 1981, §§ 12-301(8), 35-2105. *Stackhouse v. Schneider*, 559 A.2d 306, 1989 D.C. App. LEXIS 102 (1989).

Under "discovery rule," cause of action accrues when plaintiff knows or should have known of injury. *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1984 D.C. App. LEXIS 554 (1984).

— Injuries to property, ignorance of cause of action.

Under District of Columbia law, discovery rule was not applicable to delay running of statute of limitations on customer's claim against depository bank for conversion and breach of contract by opening corporate account on request of customer's employee without any documentation and taking for deposit into the account checks on missing or forged endorsements, in that the injury was not latent and ordinary business could have detected siphoning of funds within the period of limitations following conversion. D.C. Code 1981, § 12-301. *Kuwait Airways Corp. v. American Sec. Bank, N.A.*, 890 F.2d 456, 1989 U.S. App. LEXIS 17944 (C.A.D.C. 1989).

Knowledge of armory board's contracting officer in February of 1962 that cracking in concrete structure of stadium was due to interaction of aluminum conduit and calcium chloride was imputable to board itself, and complaint which was filed by armory board against conduit manufacturer and architectural firm in March of 1966 and which alleged that cause of cracks was use of aluminum conduit in conjunction with calcium chloride in concrete mix was barred by three-year period of limitations governing injuries to real property. D.C. Code § 12-301. *District of Columbia Armory Board v. Volkert*, 402 F.2d 215, 1968 U.S. App. LEXIS 5617 (C.A.D.C. 1968).

Trespass and nuisance claims against cemetery and funeral director by plaintiff whose son was buried at cemetery, based on allegations that a significant amount of water was on and beneath the burial plot, were not conclusively time-barred on the face of the complaint, and thus, the district court would not dismiss those claims on ground that three-year limitations period provided for in District of Columbia statute had run; complaint alleged that although the water trespass and nuisance trespass occurred three years before complaint was filed, plaintiff did not know of the water nuisance until two months later, and did not know of the water trespass until the filing of the action. *Tolbert v. Nat'l Harmony Mem'l Park*, 520 F.Supp.2d 209, 2007 U.S. Dist. LEXIS 82963 (2007).

Former securities broker's complaint established that he knew or should have known of his claim of tortious interference with contract, a settlement agreement between himself and

his employer, no later than the date of a disciplinary hearing at which witness gave testimony allegedly prohibited by settlement, and thus, his claim accrued for limitations purposes no later than that date. D.C. Code 1981, § 12-301(8). *Zandford v. NASD*, 30 F.Supp.2d 1, 1998 U.S. Dist. LEXIS 21922 (1998), affirmed by 221 F.3d 197, 343 U.S. App. D.C. 52, 2000 U.S. App. LEXIS 3741 (2000).

In the context of preclusion of a bona fide claim under statute of limitations, it is reasonable to conclude that a claim, which stems from insured's discovery of a loss, does not arise before insured has had an opportunity to determine extent of loss suffered. *Bolling Federal Credit Union v. Cumis Ins. Soc.*, 475 A.2d 382, 1984 D.C. App. LEXIS 360 (1984).

— Labor and employment claims, ignorance of cause of action.

The discovery of basis of lawsuit standard, with diligence requirement, would be applied in determining whether action for discharge of civilian air force employee was barred by limitations where there was alleged conspiracy to terminate government service in retaliation for congressional testimony and to conceal this by making false accusations, and plaintiff had been impeded in exploring the circumstances of his dismissal and its aftermath by invocation of governmental secrecy, but action was nonetheless barred as to air force defendants where appeal letter to the Civil Service Commission filed more than three years previously demonstrated that plaintiff had facts in hand sufficient to put him on notice of the alleged conspiracy. D.C. Code § 12-301(8). *Knight v. Furlow*, 553 A.2d 1232, 1989 D.C. App. LEXIS 19 (1989).

Where discharged civilian air force employee's action was barred as against higher air force and defense officials for failure to bring action within limitations period though he had knowledge of their actions and statements and at least constructive knowledge of grounds for the late lodged suit, he would not be allowed to maintain action against lesser air force officials merely because their identity and participation were earlier unknown, but where he had no knowledge of any White House involvement in his removal until memorandum of a presidential assistant happened to come to light within three years of filing of suit, action against such assistant was not barred unless with diligence plaintiff should have known of such involvement. D.C. Code § 12-301(8). *Knight v. Furlow*, 553 A.2d 1232, 1989 D.C. App. LEXIS 19 (1989).

Former federal employee's claim of intentional interference with her career was barred by District of Columbia one-year statute of limitations for claims intertwined with allegations of libel and slander, where claim appar-

ently was based on alleged misrepresentation that she leaked information to the press and that she was found going through papers on employee's desk, and she admitted that she knew of the allegations against her at the very latest in 1983. D.C. Code 1981, § 12-301(4). *Mittleman v. United States*, 997 F. Supp. 1, 1998 U.S. Dist. LEXIS 2579 (1998), affirmed by 1998 U.S. App. LEXIS 28527 (D.C. Cir. Oct. 15, 1998), affirmed by 1998 U.S. App. LEXIS 28549 (D.C. Cir. Oct. 15, 1998).

Former employer knew more than three years before suit that he could not have "Assistant Vice President" inscribed on his business cards and that his salary had not increased as result of alleged promotion, and thus that his contract had been breached for failure of employer to promote him; therefore, former employee's breach of contract claim was barred by District of Columbia's three-year statute of limitations for contract actions. D.C. Code 1981, § 12-301(7). *Prouty v. National R. Passenger Corp.*, 572 F. Supp. 200, 1983 U.S. Dist. LEXIS 12963 (1983).

— Lack of diligence, ignorance of cause of action.

If the injury is such that it should reasonably be discovered at the time it occurs, then the plaintiff should be charged with discovery of the injury, and the limitations period should commence, at that time. *Wiggins v. State Farm Fire & Cas. Co.*, 153 F.Supp.2d 16, 2001 U.S. Dist. LEXIS 11063 (2001).

The critical question in assessing the existence vel non of inquiry notice, so as to determine whether the statute of limitations has begun to run, is whether the plaintiff exercised reasonable diligence under the circumstances in acting or failing to act on whatever information was available to him. *Ray v. Queen*, 747 A.2d 1137, 2000 D.C. App. LEXIS 60 (2000).

In determining whether the plaintiff exercised reasonable diligence, as to be on inquiry notice that would begin the running of a statute of limitations, the court should consider, *inter alia*, whether there was a fiduciary relationship between the parties. *Ray v. Queen*, 747 A.2d 1137, 2000 D.C. App. LEXIS 60 (2000).

Plaintiff's knowledge of wrongdoing on part of one defendant does not cause accrual of plaintiff's action against another, unknown defendant responsible for same harm, unless two defendants were closely connected, such as in superior-subordinate relationship; whether that relationship is sufficiently close to cause accrual should generally be considered as question of fact that may be imputed to plaintiff by same standard of reasonable diligence under circumstances, but, in some circumstances, relationship of defendants, together with other facts, may establish as matter of law that reasonable plaintiff with knowledge of miscon-

duct of one would have conducted investigation as to other. *Diamond v. Davis*, 680 A.2d 364, 1996 D.C. App. LEXIS 310 (1996).

— Legal malpractice, ignorance of cause of action.

Statute of limitations for legal malpractice action began to run at time client became aware that attorney's advice that they include clause in application for cellular radio license that prospective licensee would devote full time to licensed enterprise had created a serious problem with earlier application for television station license in which client had agreed to devote full time to operation of television station if license were granted. *Williams v. Mordkofsky*, 901 F.2d 158, 1990 U.S. App. LEXIS 5745 (C.A.D.C. 1990).

District of Columbia's discovery rule applied to determination of statute of limitations in legal malpractice action where injury was not readily apparent. D.C. Code 1981, § 12-301. *Byers v. Burleson*, 713 F.2d 856, 1983 U.S. App. LEXIS 25170 (C.A.D.C. 1983).

Under District of Columbia law, the three-year statute of limitations for a legal malpractice claim is governed by the discovery rule in cases where the relationship between the fact of injury and some tortious conduct is obscure at the time of injury. *Gallucci v. Schaffer*, 507 F.Supp.2d 85, 2007 U.S. Dist. LEXIS 63050 (2007), affirmed by 2008 U.S. App. LEXIS 3235 (D.C. Cir. Feb. 11, 2008).

Under District of Columbia law, terrorist hostage's children were on at least inquiry notice of malpractice claim against hostage's attorneys, based on attorneys' failure to include claims on behalf of children in father's suit against Iranian government, on date public law authorizing such claims was passed; hostage had lobbied for passage of law. *Jacobsen v. Oliver*, 201 F.Supp.2d 93, 2002 U.S. Dist. LEXIS 7938 (2002).

Under the discovery rule, a plaintiff's right of action in a legal malpractice case does not accrue for purposes of the statute of limitations until the plaintiff has knowledge of, or by the exercise of reasonable diligence should have knowledge of: (1) the existence of the injury; (2) its cause in fact; and (3) some evidence of wrongdoing. D.C. Code 1981, § 12-301(8). *Ray v. Queen*, 747 A.2d 1137, 2000 D.C. App. LEXIS 60 (2000).

Inquiry notice is the applicable standard to determine when a statute of limitations begins to run, even where there are allegations of wrongful concealment or nondisclosure on the part of an attorney in a legal malpractice case. D.C. Code 1981, § 12-301(8). *Ray v. Queen*, 747 A.2d 1137, 2000 D.C. App. LEXIS 60 (2000).

Former patients' medical malpractice claims against psychiatric hospital accrued at time of hospitalization or soon thereafter, even though

patients were not aware of the full extent of their claims at that time, since patients were aware of their injuries, that the hospital was the cause in fact, and of some evidence of wrongdoing on the part of the hospital. D.C. Code 1981, § 12-301. *Morton v. National Med. Enters.*, 725 A.2d 462, 1999 D.C. App. LEXIS 21 (1999).

Statute of limitations for legal malpractice claim is governed by discovery rule in cases where relationship between fact of injury and some tortious conduct is obscure at time of injury. D.C. Code 1981, § 12-301. *R.D.H. Communs. v. Winston*, 700 A.2d 766, 1997 D.C. App. LEXIS 222 (1997).

Time that stepchildren learned that they were disinherited by their stepmother was earliest date at which stepchildren would have known of any malpractice or breach of fiduciary duty by stepmother's attorneys in drafting will, and thus stepchildren's legal malpractice and breach of fiduciary duty claims were not barred by statute of limitations; mere fact that stepchildren had previously learned of certain peculiarities in connection with their father's will would not have put stepchildren on notice of any disinheritance by stepmother. D.C. Code 1981, § 12-301(8). *Duggan v. Keto*, 554 A.2d 1126, 1989 D.C. App. LEXIS 32 (1989).

Claim for legal malpractice in drafting of will for client's father, filed more than three years after client knew of and sustained injury from alleged malpractice, was untimely even though it was filed within three years of appellate decision affirming probate court judgment invalidating will because of client's undue influence over testator. D.C. Code 1981, § 12-301. *Knight v. Furlow*, 553 A.2d 1232, 1989 D.C. App. LEXIS 19 (1989).

Client may suffer legally cognizable injury as result of attorney's malpractice prior to time that adverse trial judgment resulting from that malpractice is affirmed on appeal. *Knight v. Furlow*, 553 A.2d 1232, 1989 D.C. App. LEXIS 19 (1989).

— Libel and slander, ignorance of cause of action.

Under District of Columbia law, even if discovery rule applied to toll limitations period in defamation action, tolling was not appropriate, under rule, for employee's claims against co-worker, where employee knew about co-worker's allegedly defamatory statement before limitations period expired, and even if he did not know the precise contents of statement, he knew that allegedly defamatory statement was made, of its publication to employer and police, and that he was terminated as result of statement. *Stith v. Chadbourne & Parke, LLP*, 160 F.Supp.2d 1, 2001 U.S. Dist. LEXIS 12857 (2001).

Even if discovery rule was applicable to defamation causes of action, it was not applicable to save plaintiff's slander claim from limitations bar, where plaintiff's statements made in court filings and at press conference that defendant had spread rumors and accusing defendant of slander showed knowledge of defendant's allegedly slanderous statements well before amended complaint was filed. D.C. Code 1981, § 12-301(4). *Caudle v. Thomason*, 942 F. Supp. 635, 1996 U.S. Dist. LEXIS 5475 (1996).

— Nature of harm or damage, ignorance of cause of action.

Judgment debtor who brought action against judgment creditor for malicious prosecution, alleging that creditor wrongfully obtained default judgment against him, causing him credit problems, was not entitled to tolling of limitations period for malicious prosecution under discovery rule, even though debtor did not know that judgment would continue to cause credit problems in future, where debtor had actual knowledge of such credit problems prior to date that the limitations period began to run. *Wiggins v. State Farm Fire & Cas. Co.*, 153 F.Supp.2d 16, 2001 U.S. Dist. LEXIS 11063 (2001).

Under District of Columbia law, the nature of a cause of action determines the quantum of knowledge necessary to start the running of the statute of limitations. *Smith v. Brown & Williamson Tobacco Corp.*, 108 F.Supp.2d 12, 2000 U.S. Dist. LEXIS 11574 (2000).

Former securities broker's complaint established that he knew or should have known of his claim of common law conspiracy regarding disciplinary proceedings against him more than three years before he filed suit, and thus, limitations barred that claim. D.C. Code 1981, § 12-301(8). *Zandford v. NASD*, 30 F.Supp.2d 1, 1998 U.S. Dist. LEXIS 21922 (1998), affirmed by 221 F.3d 197, 343 U.S. App. D.C. 52, 2000 U.S. App. LEXIS 3741 (2000).

Date that secured party foreclosed on stocks securing loan from her to shareholder or date that shareholder learned of sale of stock to family-owned corporations was date that claim accrued for violations of District of Columbia statute governing disposition of collateral upon default. D.C. Code 1981, §§ 12-301, 12-301(5), 28:9-504. *Riddell v. Riddell Washington Corp.*, 680 F. Supp. 4, 1987 U.S. Dist. LEXIS 13058 (1987), affirmed in part and reversed in part by 866 F.2d 1480, 275 U.S. App. D.C. 362, 1989 U.S. App. LEXIS 1267, 8 U.C.C. Rep. Serv. 2d (CBC) 575 (1989).

Discovery rule did not apply to claims based on unlicensed status of home improvement contractor where ordinary lay person could have discovered absence of license, where injury occurred at time of signing of contract and remained the same over time, where homeowners

would still have opportunity to bring suit for damages for deficient construction, and where judicial economy favored timely adjudication. D.C. Code 1981, §§ 2-501, 2-502, 12-301(8). *Woodruff v. McConkey*, 524 A.2d 722, 1987 D.C. App. LEXIS 333 (1987).

Though cause of action for negligence is generally said to accrue at time injury occurs, discovery rule is applied to determine when statute of limitations commences in cases where relationship between fact of injury and alleged tortious conduct is obscure at time of injury. *Bussineau v. President & Directors of College*, 518 A.2d 423, 1986 D.C. App. LEXIS 487 (1986).

Three-year statute of limitations barred recovery by payee for alleged negligence of drawee in cashing check and delivering proceeds to unauthorized person five or more years before payee discovered the check was missing. D.C. Code 1961, § 12-301 (7, 8). *Adrian v. American Sec. & Trust Co.*, 211 A.2d 771, 1965 D.C. App. LEXIS 213 (App. 1965).

— Professional malpractice in general, ignorance of cause of action.

Under District of Columbia law, the statute of limitations applicable to a claim for malicious prosecution begins to run when the underlying action against a plaintiff terminates. *Rogers v. Johnson-Norman*, 466 F.Supp.2d 162, 2006 U.S. Dist. LEXIS 91637 (2006).

The statute of limitations for a professional negligence claim cannot begin to run until the first day on which discovery will show that the plaintiff had a bona fide professional negligence lawsuit based on injury, meaning a legally cognizable claim that would survive a motion to dismiss; absent injury, there is no lawsuit. *Wagner v. Sellinger*, 847 A.2d 1151, 2004 D.C. App. LEXIS 197 (2004).

Allowing the statute of limitations, for a professional negligence claim, to commence running based on an attenuated idea of notice of injury, rather than actual knowledge of injury, presupposes notice of an actual injury that has occurred, and not merely a speculative wrong; if there is no injury, even the strongest belief that the defendant has caused the plaintiff real harm will not transmute that belief into a reality, for limitations purposes. *Wagner v. Sellinger*, 847 A.2d 1151, 2004 D.C. App. LEXIS 197 (2004).

Knowledge of an injury is deemed sufficient to begin the running of the limitations period for a professional negligence claim if the plaintiff has reason to suspect that the defendant did something wrong, even if the full extent of the wrongdoing is not yet known. *Wagner v. Sellinger*, 847 A.2d 1151, 2004 D.C. App. LEXIS 197 (2004).

The plaintiff need not be fully informed about the injury, for the statute of limitations to begin

running with respect to a professional malpractice claim; she need only have some knowledge of some injury. *Wagner v. Sellinger*, 847 A.2d 1151, 2004 D.C. App. LEXIS 197 (2004).

The statute of limitations for a professional malpractice claim will not begin to run until the plaintiff either has actual notice of the cause of action, or, given the obligation to discover the discoverable, has inquiry notice as of the time a reasonable investigation would have led to actual notice. *Wagner v. Sellinger*, 847 A.2d 1151, 2004 D.C. App. LEXIS 197 (2004).

The discovery rule provides that, for limitations purposes, a professional malpractice claim does not accrue until a plaintiff knows, or by the exercise of reasonable diligence should know, of: (1) an injury; (2) its cause; and (3) some evidence of wrongdoing. *Wagner v. Sellinger*, 847 A.2d 1151, 2004 D.C. App. LEXIS 197 (2004).

Although plaintiff's reliance on defendant's superior knowledge and skill has been considered as factor in applying discovery rule to professional malpractice cases, presence or absence of such reliance has no talismanic significance, and is not dispositive to question of whether discovery rule applies in given case. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

— Securities or corporations, ignorance of cause of action.

Warrant-holder's breach of contract claim against surviving corporation under District of Columbia law, seeking cash dividend paid to shareholders, accrued on date amount of compensation acquired corporation paid shareholders was firmly set; warrant-holders would have harbored legitimate uncertainty as to that amount until shareholders were actually paid the cash dividend. D.C. Code 1981, § 12-301(7). *Gandal v. Telemundo Group*, 23 F.3d 539, 1994 U.S. App. LEXIS 11717 (C.A.D.C. 1994).

Purchase of former shareholder's stock by closely held corporations gave shareholder inquiry notice that his secured lender foreclosed on stock and, therefore, commenced running of three-year District of Columbia statute of limitations for challenge to lender's sale of stock to herself. D.C. Code 1981, §§ 12-301(8), 28:9-504. *Riddell v. Riddell Washington Corp.*, 866 F.2d 1480, 1989 U.S. App. LEXIS 1267 (C.A.D.C. 1989).

Former shareholder's knowledge of sale of his stock to closely held corporations and his secured lender's foreclosure of her rights would commence running of three-year District of Columbia statute of limitations for lender's breach of contractual duty of fair dealing and wrongful transfer. D.C. Code 1981, § 12-301(2, 7, 8). *Riddell v. Riddell Washington Corp.*, 866 F.2d 1480, 1989 U.S. App. LEXIS 1267 (C.A.D.C. 1989).

Sufficient evidence supported finding that split-off corporation had was on inquiry notice more than three years before it filed suit that it had suffered an injury from certified public accountant's (C. P.A.) negligence in that it needed to hire an accountant to refile corrected returns that C.P.A. should have noticed, *th*, 817 A.2d 806 (2003).

— **Title or property interest, ignorance of cause of action.**

District of Columbia's discovery rule applied in determining accrual of mortgagor's claims of fraud, violations of the D.C. Consumer Protection Act, D.C. Consumer Protection Procedures Act, and D.C. usury statute, conspiracy to defraud, and aiding and abetting the deception of mortgagor, negligence, and negligent supervision, which all stemmed from either direct participation in or failure to properly prevent mortgage broker from allegedly defrauding mortgagor and charging excessive fees. *Johnson v. Long Beach Mortg. Loan Trust* 2001-4, 451 F.Supp.2d 16, 2006 U.S. Dist. LEXIS 54264 (2001).

Regardless of whether underground step footing for retaining wall, extending into adjoining property, constituted permanent or continuing trespass, statute of limitations on cause of action for trespass did not begin to run until purchaser of parcel into which the footing extended discovered its presence. D.C. Code 1981, § 12-301(3). *Kayfirst Corp. v. Washington Terminal Co.*, 813 F. Supp. 67, 1993 U.S. Dist. LEXIS 1331 (1993).

Action by owners of textile production plants nationalized by Czechoslovakian government to recover compensation which was filed more than three years after owners should have become aware that their claims were not being espoused by United States was untimely. D.C. Code 1981, § 12-301. *Dayton v. Czechoslovak Socialist Republic*, 672 F. Supp. 7, 1986 U.S. Dist. LEXIS 16184 (1986), affirmed by 834 F.2d 203, 266 U.S. App. D.C. 177, 1987 U.S. App. LEXIS 16078 (1987).

In action by homeowner for compensation for various defects which arose in connection with addition to house, discovery rule was applicable to preserve contract, warranty, and negligence claims, since homeowner had to rely upon professional skills of those hired to design and construct new room, deficiency in either design or construction is even more problematic when deficiency is latent in nature, and homeowner's interests in having protection afforded by discovery rule were more compelling than potential prejudice against contractor and architect. D.C. Code 1981, § 12-301(3, 7). *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1984 D.C. App. LEXIS 554 (1984).

Interests of judicial economy militate in favor of application of discovery rule where profes-

sional returns upon request to remedy damages resulting from defective work, since to preclude application of rule would likely serve to encourage litigation in first instance, rather than as last resort. *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1984 D.C. App. LEXIS 554 (1984).

In action based upon tort and contract claims arising out of allegedly deficient design and construction of addition to house, cause of action does not accrue until plaintiff knows, or in exercise of reasonable diligence should know, of injury; receding from *Poole v. Terminix Co.*, 91 U.S.App.D.C. 287, 200 F.2d 746. *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1984 D.C. App. LEXIS 554 (1984).

Laches.

Doctrine of laches did not apply to bar indemnity and breach of contract claims that railroad asserted against its excess liability insurers in connection with judgment entered against it in personal injury action, inasmuch as railroad acted reasonably in waiting until the disposition of prior action addressing its entitlement to coverage for judgment pursuant to excess liability policies pertaining to different time period before bringing action for breach of contract and indemnity under policies covering time period pertinent to those claims, given its firm conviction at the time of prior action that insurers had indemnification obligations under policies addressed in that action, and insurers were not prejudiced by railroad's delay in bringing second action, which was brought within three-year statute of limitations. *AMTRAK v. Lexington Ins. Co.*, 357 F.Supp.2d 287, 2005 U.S. Dist. LEXIS 2282 (2005).

Rule that courts customarily follow statute of limitations even in equity cases where essentially legal relief, such as damages or account, is sought, is not strictly followed in District of Columbia; guiding principle is that laches is principally question of inequity of permitting claim to be enforced. D.C. Code § 12-301(8). *Blankenship v. Boyle*, 329 F. Supp. 1089, 1971 U.S. Dist. LEXIS 13548 (1971).

Trial court ruling on laches defense could conclude that trade name owner was not vigilant and failed to exercise diligence in protecting rights under consent decree against competitor and that competitor was prejudiced by owner's delay before seeking to hold competitor in contempt for violating consent decree entered more than twelve years earlier, and, thus, the court could limit the owner's right to recover competitor's profits to a reasonable period of time, five years, before the owner filed petition; with virtually no effort, the owner could have learned that the competitor was using the owner's name in sales to federal government offices located in the District of Columbia in violation of the decree. *Fed. Mktg. Co. v. Va.*

Impression Prods. Co., 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

"Laches" is the principle that equity will not aid a plaintiff whose unexcused delay, if the suit were allowed, would be prejudicial to the defendant. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

To establish the defense of laches, the evidence must show both that the delay was unreasonable and that it prejudiced the defendant. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Of the two components of laches, unreasonable delay and prejudice, prejudice is the primary factor. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

If the delay is lengthy, a lesser showing of prejudice is required to establish laches; thus, when the delay is measured in years rather than months, reliance interests grow, memories dim, evidence is lost, and prejudice may be inferred more readily. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

The doctrine of laches applied to trade name owner's petition to hold competitor in contempt for violating consent decree entered more than twelve years earlier, even though the owner owed no duty to monitor competitor's compliance with a court order. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Laches is not a valid defense, unless the defendant has been prejudiced by delay and that delay was unreasonable. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

In measuring reasonableness of delay for purposes of application of doctrine of laches, 15-year period for adverse possession may offer helpful, if not binding, guidance. D.C. Code § 12-301(1). *Martin v. Carter*, 400 A.2d 326, 1979 D.C. App. LEXIS 362 (1979).

Limitation applicable to action.

— Actions not specially prescribed, limitation applicable to action.

Actions for review of findings of state administrator with respect to appropriate education for handicapped student is more analogous to appeal from administrative agency than to cause of action is not otherwise specially prescribed, so that the 30-day limitation period for seeking review of administrative agency action under District of Columbia law is applicable to an action for review of District's decision with respect to appropriate education. Education of the Handicapped Act, § 615(e)(2), as amended, 20 U.S.C. § 1415(e)(2); D.C. Code 1981, § 12-

301(8); D.C. Court of Appeals Rule 15(a). *Spiegler v. District of Columbia*, 866 F.2d 461, 1989 U.S. App. LEXIS 699 (C.A.D.C. 1989).

On any theory that hotel was liable for assaults committed upon plaintiff, perhaps by some person in hotel's employ, it was necessary to commence action within three-year period. D.C. Code § 12-301(4, 8). *Alley v. Dodge Hotel*, 551 F.2d 442, 1977 U.S. App. LEXIS 10237 (C.A.D.C. 1977), writ of certiorari denied by 431 U.S. 958, 97 S. Ct. 2684, 53 L. Ed. 2d 277, 1977 U.S. LEXIS 2303 (1977).

Action against insurance agent for negligence in not supplying insured with protection against liability for injuries sustained by farm employees when agent procured farmers' comprehensive personal liability policy was barred by three-year statute of limitations, where suit was not filed until four years after insured learned from insurer that it denied coverage. D.C. Code 1961, § 12-201. *Finegan v. Lumbermens Mut. Casualty Co.*, 329 F.2d 231, 1963 U.S. App. LEXIS 3736 (C.A.D.C. 1963).

The provision of District of Columbia Code that no action, limitation of which is not otherwise specially prescribed therein, shall be brought after three years from time when right of action accrued, is sufficiently broad to include actions to enforce federally created rights. D.C. Code 1951, § 12-201. *Cassell v. Taylor*, 243 F.2d 259, 1957 U.S. App. LEXIS 4704 (C.A.D.C. 1957).

District of Columbia's three-year statute of limitations for actions for which a limitations period was not otherwise specially prescribed, rather than 90-day limitations period applicable to substantive IDEA challenges to claims for attorney fees arising under the IDEA, governed claim brought by parent of disabled student, seeking to recover attorney fees and costs incurred during administrative proceedings brought under the IDEA. *Davidson v. District of Columbia*, 736 F.Supp.2d 115, 2010 U.S. Dist. LEXIS 93300 (2010).

Plaintiff's claim of intentional infliction of emotional distress against District of Columbia arising from police officers' alleged conduct in handcuffing her and removing money from her pocket to pay debt they believed she owed was governed by District's one-year limitations period for tort claims, rather than residuary three-year limitations period; plaintiff's claim was based on same events as her assault, battery, false arrest, and false imprisonment claims. *Zhi Chen v. Monk*, 701 F.Supp.2d 32, 2010 U.S. Dist. LEXIS 29820 (2010).

Because plaintiffs claimed that defendants acted "without probable cause," their "abuse of process" claim against police officer was actually a malicious prosecution claim for limitations purposes. *Rynn v. Jaffe*, 457 F.Supp.2d 22, 2006 U.S. Dist. LEXIS 76140 (2006).

Thirty-day statute of limitations applicable under District of Columbia law to substantive appeals, and not three-year statute of limitations applicable under District of Columbia law to actions whose limitation was not otherwise specially prescribed, applied to issue of attorney fees arising from attorney's representation of parents of disabled students in administrative proceedings against District of Columbia public schools to secure rights under Individuals with Disabilities Education Act (IDEA); fee petition was ancillary to underlying dispute before school, and shorter limitations period would assist in preventing resolution of merits from being sidetracked by negotiations over fees, which would be to detriment of students. *Abraham v. District of Columbia*, 338 F.Supp.2d 113, 2004 U.S. Dist. LEXIS 19847 (2004).

District of Columbia's three-year statute of limitations for causes of action "not otherwise specifically prescribed" applied to action brought by minor children who had initiated successful administrative claims under Individuals with Disabilities Act (IDEA), seeking to collect outstanding attorney fees and costs, since action for attorney fees was not akin to appeal from administrative decision. *Kaseman v. District of Columbia*, 329 F.Supp.2d 20, 2004 U.S. Dist. LEXIS 15358 (2004).

District of Columbia's three-year statute of limitations for filing negligence claims, not Virginia's two-year statute of limitations for survival actions, applied to survivor action brought in the District of Columbia by estate and family of bicycling fundraiser participant against the organizer of the fundraiser and medical providers that treated participant in Virginia before her death; statute of limitations was not part of a survival action and thus was not substantive under Virginia law. *Jaffe v. Pallotta TeamWorks*, 276 F.Supp.2d 102, 2003 U.S. Dist. LEXIS 13881 (2003), reversed by, remanded by 374 F.3d 1223, 362 U.S. App. D.C. 398, 2004 U.S. App. LEXIS 14666 (2004).

Because there is no specific statute limiting time for filing claim for intentional infliction of emotional distress in District of Columbia, independent action for intentional infliction of emotional distress is subject to three-year residual limitation period. *Thompson v. Jasas Corp.*, 212 F.Supp.2d 21, 2002 U.S. Dist. LEXIS 13266 (2002).

Residuary three-year limitation period under District of Columbia law applies only if intentional infliction of emotional distress claim is not intertwined with any of causes of action for which period of limitation is specifically provided. *Thompson v. Jasas Corp.*, 212 F.Supp.2d 21, 2002 U.S. Dist. LEXIS 13266 (2002).

Three-year statute of limitations period applied to action brought on behalf of minor children by either their parents, guardians, or

court-appointed education advocates to recover interests for alleged late payments of their attorney fees that were voluntarily paid by District of Columbia for legal services provided by their attorneys during administrative proceedings initiated under Individuals with Disabilities Education Act (IDEA); there was no District of Columbia statute of limitations that specifically controlled when actions for attorney fees had to be initiated, and therefore three year limitation period, which covered causes of actions not otherwise specifically prescribed applied. *Akinseye v. District of Columbia*, 193 F.Supp.2d 134, 2002 U.S. Dist. LEXIS 6384 (2002), reversed by, remanded by 339 F.3d 970, 358 U.S. App. D.C. 56, 2003 U.S. App. LEXIS 16729 (2003).

Former FBI agent's claims against media commentator, alleging that he conspired with others to injure agent in his person and property on account of agent's lawful discharge of his duties, and on account of agent's having provided testimony in court of law, were subject to three-year default statute of limitations under District of Columbia law. *Sculimbrene v. Reno*, 158 F.Supp.2d 8, 2001 U.S. Dist. LEXIS 12307 (2001).

District of Columbia's three-year general statute of limitations applied to Bivens action against police officers, by claimant alleging that his arrest for distributing leaflets on Capitol grounds violated his First and Fourth Amendment rights; Constitutional violations were not sufficiently similar to any intentional torts covered by one-year statute suggested by officers as alternative. *Lederman v. United States*, 131 F.Supp.2d 46, 2001 U.S. Dist. LEXIS 3427 (2001), affirmed in part and reversed in part by, remanded by 291 F.3d 36, 351 U.S. App. D.C. 386, 2002 U.S. App. LEXIS 10271 (2002).

Under District of Columbia law, three-year statute of limitations for actions for which limitation is not otherwise specially prescribed, rather than 12-year statute of limitations for instruments under seal, applied to federally owned railroad corporation's claim under D.C. Arbitration Act for confirmation of United States Railway Association arbitration decision as to scope of rights to use of corporation's lines granted to private railroad company's predecessor in interest by final system plan developed by Association, despite fact that agreements between corporation and company were made under seal, where Association decision was not made under seal. *Regional Rail Reorganization Act of 1973*, §§ 201(a), 202, 45 U.S.C. §§ 711(a), 712; D.C. Code 1981, §§ 12-301(6, 8), 16-4301 et seq. *Consolidated Rail Corp. v. Delaware & H. Ry. (In re Consolidated Rail Corp.)*, 867 F. Supp. 25, 1994 U.S. Dist. LEXIS 19431 (1994).

Under District of Columbia law, three-year statute of limitations for actions for which

limitation is not otherwise specially prescribed applied to federally owned railroad corporation's common-law claim for confirmation of United States Railway Association arbitration decision as to scope of rights to use of corporation's lines granted to private railroad company's predecessor in interest by final system plan developed by Association. Regional Rail Reorganization Act of 1973, §§ 201(a), 202, 45 U.S.C. §§ 711(a), 712; D.C. Code 1981, § 12-301(8). Consolidated Rail Corp. v. Delaware & H. Ry. (In re Consolidated Rail Corp.), 867 F. Supp. 25, 1994 U.S. Dist. LEXIS 19431 (1994).

General statute of limitations in District of Columbia provided that suits must be brought within three years from time cause of action accrues if there is no other limiting statute on point applies to constitutional torts. D.C. Code § 12-301(8). Logiurato v. Action, 490 F. Supp. 84, 1980 U.S. Dist. LEXIS 13108 (1980).

Three-year statute of limitations applies for tort claims under District of Columbia law. Plan Comm. v. PricewaterhouseCoopers, LLP, 335 B.R. 234, 2005 U.S. Dist. LEXIS 18889 (2005), dismissed by 2007 U.S. Dist. LEXIS 29240 (D.D.C. Apr. 20, 2007).

Former employee's negligence action against employer following assault by coemployee was governed by three year limitations period applicable to negligence actions, rather than one year limitations period applicable to assault actions, where employee alleged distinct negligence claim apart from her assault claim by alleging that employer's knowledge of and failure to heed risk that coemployee posed to employee proximately caused assault. Reaves-Bey v. Karr, 840 A.2d 701, 2004 D.C. App. LEXIS 8 (2004).

Residual three-year statutory limitations period, for claims not otherwise specifically prescribed, rather than four-year limitations provision for breach of a sales contract under Uniform Commercial Code (UCC), applied to consumer's class action against cable company for unreasonably high late penalties, brought pursuant to Consumer Protection Procedures Act (CPPA). Dist. Cablevision Ltd. P'shp v. Bassin, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

Three-year limitations period on apartment building purchaser's tortious interference with contract claim against tenants' association and the association's attorneys was not tolled by association's litigation of quiet title action, when tenants sought to purchase building themselves. Beard v. Edmondson & Gallagher, 790 A.2d 541, 2002 D.C. App. LEXIS 15 (2002).

Where Survival Act claim alleging that patient died as a result of injuries allegedly caused by negligent acts and omissions of members of hospital staff was filed within three years after the decedent would have had a claim if he had lived, claim was timely. D.C.

Code § 12-301(8). Strother v. District of Columbia, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

A suit under the District of Columbia Emergency Rent Act for the recovery of rent overcharges is governed by the three-year statute of limitations as an action, the limitation of which is not otherwise specifically prescribed. D.C. Code 1940, §§ 12-201, 45-1610(a). Lustine v. Williams, 68 A.2d 900, 1949 D.C. App. LEXIS 247 (Cr.App. 1949).

— Assault, battery, mayhem or wounding, limitation applicable to action.

Under District of Columbia law, one-year statute of limitations applied to pretrial detainee's claim that police officers intentionally caused him emotional distress, where emotional distress claim was not independent of alleged assault and battery by police officers. D.C. Code 1981, § 12-301(4, 8). Hunter v. District of Columbia, 943 F.2d 69, 1991 U.S. App. LEXIS 20108 (C.A.D.C. 1991).

Where shooting victim filed his complaint against District of Columbia and its chief of police two years and three months after incident in which police officer shot victim with his service revolver while allegedly in grossly intoxicated condition, where subject case involved claims grounded in negligence, and where limitation period for negligence actions in the District of Columbia was three years, plaintiff's complaint was timely, notwithstanding contention that the complaint was essentially for "wounding" and thus barred under one-year limitation period for wounding. D.C. Code § 12-301(4, 8). Marusa v. District of Columbia, 484 F.2d 828, 1973 U.S. App. LEXIS 8264 (C.A.D.C. 1973).

District of Columbia statute of limitations for plaintiff's sexual assault and battery claim began to run on date the alleged assault occurred. Carter v. Wash. Metro. Transit Auth., 451 F.Supp.2d 150, 2006 U.S. Dist. LEXIS 63428 (2006), reversed by, remanded by 503 F.3d 143, 378 U.S. App. D.C. 244, 2007 U.S. App. LEXIS 23369, 90 Empl. Prac. Dec. (CCH) P42967, 101 Fair Empl. Prac. Cas. (BNA) 1226 (2007).

Where business owner's assault claim against the District of Columbia, based on alleged conduct of D.C. agents when they physically entered business owner's premises and unlawfully seized and removed personal effects, was barred by statute of limitations, business owner's intentional infliction of emotional distress claim, based on alleged acts, threats, verbal abuse and physical aggression by same agents during same incident, was also barred; claims were intertwined. Tibbs v. Williams, 263 F.Supp.2d 39, 2003 U.S. Dist. LEXIS 8226 (2003).

Former employee's intentional infliction of emotional distress claim under District of Columbia law was intertwined with her hostile work environment claim against supervisor, and, thus, one-year limitation period for assault and battery claims under District of Columbia law, rather than three year residual period, applied to claim. *Thompson v. Jasad Corp.*, 212 F.Supp.2d 21, 2002 U.S. Dist. LEXIS 13266 (2002).

Torts of assault, battery, and false imprisonment arising out of attack in Israel on bus containing numerous citizens of and visitors to Israel were barred by District of Columbia one-year statute of limitation, as were torts of intentional infliction of emotional distress and/or intentional infliction of cruel, inhuman and degrading treatment, which torts were not different enough to justify application of residual three-year limitation period. D.C. Code 1973, § 12-301(4, 8). *Hanoch Tel-Oren v. Libyan Arab Republic*, 517 F. Supp. 542, 1981 U.S. Dist. LEXIS 13199 (1981), affirmed by 726 F.2d 774, 233 U.S. App. D.C. 384, 1984 U.S. App. LEXIS 25809 (1984).

The District of Columbia, as a municipality, enjoys limited sovereign immunity from the operation of statutes of limitation under statute and the common law doctrine of *nullum tempus occurrit regi* (no time runs against the sovereign), while in the performance of public functions. *Solid Rock Church v. Friendship Pub. Charter Sch., Inc.*, 925 A.2d 554, 2007 D.C. App. LEXIS 250 (2007).

Arrestee's assault claim was subject to one-year statute of limitations for intentional tort claims, rather than three-year statute on negligence claims, even though arrestee phrased claim as one of excessive force; gravamen of arrestee's complaint was that conduct of arresting officer amounted to assault and battery. D.C. Code 1981, § 12-301(4, 8). *District of Columbia v. Tinker*, 691 A.2d 57, 1997 D.C. App. LEXIS 35 (1997).

Amended complaint filed by citizen against District of Columbia, chief of police, and two police officers alleging that the officers "carelessly and negligently" arrested plaintiff, thereby fracturing his left arm, specified no negligent act, failed to characterize breach of duty which might have resulted in negligent liability, and thus did not raise a cognizable claim of negligence; the claim, therefore, was barred by limitation of actions applicable to intentional tort of assault and battery. D.C. Code § 12-301(4). *Maddox v. Bano*, 422 A.2d 763, 1980 D.C. App. LEXIS 381 (1980).

— Breach of fiduciary duty, limitation applicable to action.

Cause of action for breach of fiduciary duty accrued, and three-year statute of limitations under District of Columbia law began to run,

when immigration attorneys' client was terminated from employment with their common employer, giving rise to alleged conflict of interest. *Mawalla v. Hoffman*, 569 F.Supp.2d 253, 2008 U.S. Dist. LEXIS 60774 (2008).

— Civil rights, limitation applicable to action.

District of Columbia's three-year residual statute of limitations for "other personal injury claims" represents most analogous statute of limitations for purposes of § 1981 retaliation claims; claims under § 1981 are treated as personal injury claims for statute of limitations purposes, with residual statutes of limitations applicable in jurisdictions having multiple statutes of limitations applicable to personal injury actions. 42 U.S.C. § 1981; D.C. Code 1981, § 12-301(8). *Carney v. American Univ.*, 151 F.3d 1090, 1998 U.S. App. LEXIS 18373 (C.A.D.C. 1998).

District of Columbia's three-year statute of limitations for personal injury suits is applicable to action under 42 U.S.C. § 1983. D.C. Code 1981, § 12-301(8). *Banks v. Chesapeake & Potomac Tel. Co.*, 802 F.2d 1416, 1986 U.S. App. LEXIS 29205 (C.A.D.C. 1986), amended by 42 Fair Empl. Prac. Cas. (BNA) 464 (D.C. Cir. Oct. 30, 1986).

District of Columbia's one-year statute of limitations for intentional torts does not apply to action under 42 U.S.C. § 1981. D.C. Code 1981, § 12-301(4). *Banks v. Chesapeake & Potomac Tel. Co.*, 802 F.2d 1416, 1986 U.S. App. LEXIS 29205 (C.A.D.C. 1986), amended by 42 Fair Empl. Prac. Cas. (BNA) 464 (D.C. Cir. Oct. 30, 1986).

Common-law and constitutional claims asserted against police officer arising out of seizure of plaintiff's automobile and alleged conversion of the automobile were not subject to one year statute of limitations; rather, applicable statute of limitations was three years and therefore such claims were timely. D.C. Code 1981, § 12-301(2, 4, 8). *McClam v. Barry*, 697 F.2d 366, 1983 U.S. App. LEXIS 27892 (C.A.D.C. 1983).

Plaintiff's constitutional assault claim was most closely analogous in the relevant respect to the common-law assault cause of action for which District of Columbia provided a one year limitations period; thus, the one year period applied to and barred plaintiff's claim since application of that period was not inconsistent with any federal policy underlying the constitutional cause of action. D.C. Code 1981, § 12-301(4). *McClam v. Barry*, 697 F.2d 366, 1983 U.S. App. LEXIS 27892 (C.A.D.C. 1983).

Suit charging former employer with violations of District of Columbia's Human Rights Law and with violations of federal statute governing equal rights under the law and conspiring to interfere with civil rights was subject

only to applicable statute of limitations in District of Columbia, allowing such actions to be brought within three years of harm giving rise to cause of action. D.C. Code 1981, §§ 1-2550 et seq., 12-301(8); 42 U.S.C. §§ 1981, 1985. *Gordon v. National Youth Work Alliance*, 675 F.2d 356, 1982 U.S. App. LEXIS 20483 (C.A.D.C. 1982).

Statute providing that all persons within United States shall have same right to make and enforce contracts as is enjoyed by white citizens provides no period of limitations, and reference must be had to appropriate periods stated in statute of local application. 42 U.S.C. § 1981; D.C. Code § 12-301(7, 8). *Macklin v. Spector Freight Systems, Inc.*, 478 F.2d 979, 1973 U.S. App. LEXIS 10026 (C.A.D.C. 1973).

Court is required as matter of judicial implication to create procedural limitations on actions under civil rights statutes for which Congress has enacted no applicable limitation, and procedural limitations thus imposed should be consistent with the humane and remedial policy underlying civil rights statute. 42 U.S.C. §§ 1981, 1982; D.C. Code § 12-301(7, 8). *Macklin v. Spector Freight Systems, Inc.*, 478 F.2d 979, 1973 U.S. App. LEXIS 10026 (C.A.D.C. 1973).

Three-year limitation period under District of Columbia law that applied to federal anti-discrimination claims brought by former graduate student against university and university officials began to run on the date he learned of his dismissal by letter from the university; university's subsequent refusal to reverse or alter its decision in the aftermath of its dismissal notification did not trigger the limitations period. *Mwabira-Simera v. Howard Univ.*, 692 F.Supp.2d 65, 2010 U.S. Dist. LEXIS 21955 (2010).

The District of Columbia's residuary three-year limitation period applies only if the intentional infliction of emotional distress claim is not intertwined with any of the causes of action for which a period of limitation is specifically provided. *Munoz v. Bd. of Trs.*, 590 F.Supp.2d 21, 2008 U.S. Dist. LEXIS 97865 (2008), affirmed by 427 Fed. Appx. 1, 2011 U.S. App. LEXIS 6910 (D.C. Cir. 2011).

University professor's intentional infliction of emotional distress claim against university's board of trustees, based on same conduct that formed her District of Columbia Human Rights Act (DCHRA) claim against board alleging race and national origin discrimination, was intertwined with DCHRA claim and emotional distress claim assumed DCHRA's one-year statute of limitations period, rather than District of Columbia's three-year residual limitation period. *Munoz v. Bd. of Trs.*, 590 F.Supp.2d 21, 2008 U.S. Dist. LEXIS 97865 (2008), affirmed by 427 Fed. Appx. 1, 2011 U.S. App. LEXIS 6910 (D.C. Cir. 2011).

District of Columbia's general three-year statute of limitations for personal injury actions applied to plaintiff's §§ 1983 action. *Curtis v. Lanier*, 535 F.Supp.2d 89, 2008 U.S. Dist. LEXIS 14914 (2008).

District of Columbia's three-year catchall limitations period, rather than thirty-day limitation period for appeals from administrative decisions, governed parent's action against public charter school for attorney fees under IDEA. *Brown v. Barbara Jordan P.C.S.*, 495 F.Supp.2d 1, 2007 U.S. Dist. LEXIS 42493 (2007).

District of Columbia's three-year catchall limitations period, not thirty-day limitations period provided in Rules of District of Columbia Court of Appeals for review of agency decisions or orders which governed appeals from hearing officer determinations (HOD), applied to actions for attorney fees brought under IDEA. *Armstrong v. Vance*, 328 F.Supp.2d 50, 2004 U.S. Dist. LEXIS 15109 (2004).

Terminated employee's §§ 1981 claim was subject to three-year District of Columbia statute of limitations for personal injury claims. *Pyne v. District of Columbia*, 298 F.Supp.2d 7, 2002 U.S. Dist. LEXIS 27008 (2002), dismissed by 468 F. Supp. 2d 14, 2006 U.S. Dist. LEXIS 14343 (D.D.C. 2006).

Under District of Columbia law, pendency of civil rights action against university by former university student and his two adult children, who alleged that the university deported the two children, who were United States citizens, when the children were minors and living in the university's dormitory, which action was involuntarily dismissed, did not toll the three-year statute of limitations for deprivation of civil rights. *Osuchukwu v. Gallaudet Univ.*, 296 F.Supp.2d 1, 2002 U.S. Dist. LEXIS 27009 (2002).

One-year limitations period for black Democratic applicant's discrimination and retaliation claims under the District of Columbia Human Rights Act (DCHRA) began to run when employer allegedly refused to hire applicant in violation of DCHRA. *Morgan v. Fed. Home Loan Mortg. Corp.*, 172 F.Supp.2d 98, 2001 U.S. Dist. LEXIS 17310 (2001), affirmed by 328 F.3d 647, 356 U.S. App. D.C. 109, 2003 U.S. App. LEXIS 8748, 84 Empl. Prac. Dec. (CCH) P41515, 105 Fair Empl. Prac. Cas. (BNA) 954 (2003).

District of Columbia's residual three-year statute of limitations applied to §§ 1983 claims alleging use of excessive force, false arrest and imprisonment, malicious prosecution, and conspiracy. *Parker v. Grand Hyatt Hotel*, 124 F.Supp.2d 79, 2000 U.S. Dist. LEXIS 17024 (2000).

District of Columbia's three-year personal injury statute of limitations, rather than one-year intentional torts limitations period, ap-

plies to § 1981 claim. 42 U.S.C. §§ 1981, 1988; D.C. Code 1981, § 12-301(4, 8). *Harris v. Perini Corp.*, 948 F. Supp. 4, 1996 U.S. Dist. LEXIS 18735 (1996).

District of Columbia three-year general statute of limitations for personal injury actions applied so as to bar § 1983 action brought by occupant of apartment that was searched without warrant after arrest of another occupant. D.C. Code 1981, § 12-301(8); 42 U.S.C. § 1983; U.S. Const. Amend. 4. *Rivers v. Montgomery*, 842 F. Supp. 1, 1993 U.S. Dist. LEXIS 16066 (1993).

University employee's § 1983 and § 1981 employment discrimination actions were subject to three-year limitation period imposed by District of Columbia statute which applies to actions for which limitations period is not otherwise specifically provided. 42 U.S.C. §§ 1981, 1983; D.C. Code 1981, § 12-301(8). *Holland v. Board of Trustees of University of the Dist. of Columbia*, 794 F. Supp. 420, 1992 U.S. Dist. LEXIS 11199 (1992).

Employment discrimination claim under § 1981 was subject to District of Columbia's three-year limitation period for general torts, rather than one-year limitation period for intentional torts. 42 U.S.C. § 1981; D.C. Code 1981, § 12-301(4, 8). *Saunders v. George Washington University*, 768 F. Supp. 854, 1991 U.S. Dist. LEXIS 12611 (1991).

District of Columbia's three-year personal injury statute of limitation was applicable to claim brought under Rehabilitation Act. Rehabilitation Act of 1973, § 504, as amended, 29 U.S.C. § 794; D.C. Code 1981, § 12-301(8). *Doe v. Southeastern University*, 732 F. Supp. 7, 1990 U.S. Dist. LEXIS 3141 (1990), appeal dismissed without opinion by 927 F.2d 1257, 288 U.S. App. D.C. 402 (1991).

District of Columbia statute of limitations of three years for personal injury actions, rather than one-year statute of limitations for defamation, assault, battery, malicious prosecution, false arrest, and false imprisonment, governed civil rights conspiracy claim by employee who was allegedly discharged in retaliation for opposition to discriminatory treatment of black employee. 42 U.S.C. § 1985(3); D.C. Code 1981, § 12-301(4, 8). *Alder v. Columbia Historical Soc.*, 690 F. Supp. 9, 1988 U.S. Dist. LEXIS 9252 (1988).

District of Columbia's one-year limitations period for intentional torts, rather than three-year catchall period applicable to other personal injury claims, applied to arrestee's civil rights action against District of Columbia and police officers under § 1983, alleging officers had used excessive force on arrestee, striking him without provocation and ordering trained police dog to attack him. 42 U.S.C. §§ 1981, 1983; D.C. Code 1981, §§ 12-301, 12-301(4, 8).

Williams v. District of Columbia, 676 F. Supp. 329, 1987 U.S. Dist. LEXIS 12575 (1987).

The three-year limitation period of D.C. Code 1981, § 12-301(8), is the most appropriate statute of limitations for all Section 1983 claims in the District of Columbia. 42 U.S.C. § 1983. *Hobson v. Brennan*, 625 F. Supp. 459, 1985 U.S. Dist. LEXIS 12724 (1985).

Limitations period of three years govern Section 1983, Section 1985, and Bivens claims. 26 U.S.C. § 6531(1); 42 U.S.C. §§ 1983, 1985; D.C. Code 1981, § 12-301(8). *Hobson v. Brennan*, 625 F. Supp. 459, 1985 U.S. Dist. LEXIS 12724 (1985).

District of Columbia "catchall" limitations period of three years [D.C. Code 1981, § 12-301(8)] applied to section 1983 action against District of Columbia government and several of its police officers stemming from incident in which plaintiff alleged that those officers used unnecessary and unlawful force while taking her into custody and alleging that the government was negligent in failing to properly train and supervise its police officers. 42 U.S.C. § 1983. *Greenfield v. District of Columbia*, 623 F. Supp. 47, 1985 U.S. Dist. LEXIS 14018 (1985).

A three-year limitation provision under District of Columbia law would be applied with respect to Title VII back pay recovery period in action by stewardesses brought against airlines on claim of sex discrimination. Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C. § 2000e et seq.; D.C. Code §§ 12-301, 36-401 et seq., 36-415, 36-416. *Laffey v. Northwest Airlines, Inc.*, 481 F. Supp. 199, 1979 U.S. Dist. LEXIS 11156 (1979).

District of Columbia's borrowed three year "catchall" statute of limitations, not the 90-day limitations period for appeals of IDEA administrative hearings submitted to district courts, applied to IDEA action to recover attorney fees from District; action was independent from, not ancillary to, underlying administrative proceeding. *Wilson v. Gov't of the Dist. of Columbia*, 269 F.R.D. 8, 2010 U.S. Dist. LEXIS 77202 (2010).

A plaintiff attempting to establish a continuing violation, for purpose of extending limitations period under Human Rights Act, must demonstrate continuous and repetitious wrong with damages flowing from the act as a whole, rather than from each individual act. *Boulton v. Inst. of Int'l Educ.*, 808 A.2d 499, 2002 D.C. App. LEXIS 557 (2002).

A continuing violation exists, for purposes of extending limitations period under Human Rights Act, where there is a series of related acts, one or more of which falls within the limitations period, or the maintenance of a discriminatory system both before and during the statutory period, and such discrimination may not be limited to isolated incidents, but

must pervade a series or pattern of events which continue into the filing period. *Boulton v. Inst. of Int'l Educ.*, 808 A.2d 499, 2002 D.C. App. LEXIS 557 (2002).

Employee's sexual orientation discrimination claim under Human Rights Act was time barred since, other than his termination, the acts of sexual orientation discrimination of which he complained occurred outside the one-year limitations period and employee did not present evidence of continuing violations which extended into the one year period before he filed suit. *Boulton v. Inst. of Int'l Educ.*, 808 A.2d 499, 2002 D.C. App. LEXIS 557 (2002).

The limitation period for a civil action brought pursuant to the Human Rights Act is one year. *Boulton v. Inst. of Int'l Educ.*, 808 A.2d 499, 2002 D.C. App. LEXIS 557 (2002).

Claims of intentional and negligent infliction of emotional distress, which were predicated on the same conduct that gave rise to claims of discrimination under the Human Rights Act, were so intertwined with the Human Rights claims as to be subject to the one-year limitations period of the Human Rights Act. *Mackey v. Committee for Economic Development*, 126 WLR 1089 (Super. Ct. 1998).

— **Construction with other laws, limitation applicable to action.**

One-year statutes of limitations applied to District of Columbia employee's claims under District of Columbia Human Rights Act (DCHRA) and common law of slander. *Savoy v. VMT Long Term Care Mgmt. Co.*, 522 F.Supp.2d 211, 2007 U.S. Dist. LEXIS 86630 (2007).

District of Columbia's three-year general statute of limitations applied, in determining the proper time period for any damages accruing under Montana and North Dakota state law infringement claims asserted by seller of consumer and commercial fireworks against competitor. *Gaudreau v. Am. Promotional Events, Inc.*, 511 F.Supp.2d 152, 2007 U.S. Dist. LEXIS 72055 (2007).

Under District of Columbia Survival Act, decedent's sister did not have standing to bring wrongful death action, despite sister's contention that right to pursue wrongful death claim was property of their mother and descended to her upon mother's death, where mother was alive throughout statutory period for filing suit, but failed to do so. *Dickens v. District of Columbia*, 502 F.Supp.2d 90, 2007 U.S. Dist. LEXIS 61150 (2007).

Mortgagor's District of Columbia law claims were not "intertwined" with her Truth in Lending Act (TILA) claims, and therefore D.C. claims were not governed by TILA's limitations period; the TILA claims turned on alleged failures to make disclosures and effectuate rescission, while D.C. claims involved elements dif-

ferent from or additional to those TILA elements, including unconscionable and burdensome terms, impermissibly charged points, closing in mortgagor's home, an unlicensed mortgage broker, and/or misleading representations as to loan suitability and affordability. *Johnson v. Long Beach Mortg. Loan Trust* 2001-4, 451 F.Supp.2d 16, 2006 U.S. Dist. LEXIS 54264 (2001).

Statute of limitations governing actions based on exposure to asbestos which was adopted in 1987, under which plaintiff has one year from later of date of disability, or date on which he knew or should have known that asbestos exposure caused disability, to bring action, did not apply to action brought in November 1988 by worker who first suffered disability in April 1986 and learned of cause in January 1987, and action was instead governed by general three-year limitations period applicable prior to adoption of statute. D.C. Code 1981, §§ 12-301(8), 12-311. *Owens-Corning Fiberglas Corp. v. Henkel*, 689 A.2d 1224, 1997 D.C. App. LEXIS 30 (1997).

As the Survival Act does not contain a time limitation, the three-year statute of limitations, generally applicable to tort claims, applies. D.C. Code §§ 12-101, 12-301(8). *Strother v. District of Columbia*, 372 A.2d 1291, 1977 D.C. App. LEXIS 468 (1977).

— **Contracts in general, limitation applicable to action.**

Under District of Columbia law, university student's claims against university and university officials for breach of contract, breach of the duty of good faith and fair dealing, fraud in the inducement, intentional infliction of emotional distress, and negligent infliction of emotional distress, in connection with the non-renewal of his full wrestling scholarship, accrued, for limitations purposes, on date that student received letter informing him that his scholarship would not be renewed and that he had been removed from the wrestling team, rather than when his appeals to the university were denied. *Lopiccolo v. Am. Univ.*, 840 F.Supp.2d 71, 2012 U.S. Dist. LEXIS 1300 (2012).

Claim brought by former trustees against Armenian genocide museum sponsor, alleging breach of contract with respect to sponsor's failure to reissue promissory note, accrued under District of Columbia law when reasonable time elapsed for trustees to take legal action to enforce promissory note. *Armenian Assembly of Am., Inc. v. Cafesjian*, 772 F.Supp.2d 20, 2011 U.S. Dist. LEXIS 7438 (2011).

One-year contractual limitations period, under homeowners policy, applied to insureds' claim that insurer breached contract by denying coverage for damage to roof and structure of home caused by fallen tree, rather than District of Columbia's three-year statute of limitations

for breach of contract claims. *Nkpado v. Std. Fire Ins. Co.*, 697 F.Supp.2d 94, 2010 U.S. Dist. LEXIS 27578 (2010).

District of Columbia statute of limitations on breach of contract claims was inapplicable to tenure revocation proceedings conducted against former professor, for purposes of professor's claim seeking declaratory judgment that university could not rely on events occurring more than three years prior in making revocation decision, since proceedings were wholly governed by university's faculty code. *Saha v. Lehman*, 537 F.Supp.2d 122, 2008 U.S. Dist. LEXIS 18606 (2008), affirmed by 2008 U.S. App. LEXIS 27923 (D.C. Cir. July 31, 2008).

Contractor was precluded from claiming that there was any equitable tolling of statute of limitations, on its claim that corporation majority owned by Colombian government breached contract to pay for power plant to be constructed in that country; contractor had all information it needed to commence timely suit, as evidenced by its filing of action similar to present case in Colombia, within limitations period. *TermoRio S.A. E.S.P. v. Electrificadora Del Atlantico S.A. E.S.P.*, 421 F.Supp.2d 87, 2006 U.S. Dist. LEXIS 14352 (2006), affirmed by 487 F.3d 928, 376 U.S. App. D.C. 242, 2007 U.S. App. LEXIS 12201, 67 Fed. R. Serv. 3d (Callaghan) 1244 (2007).

Under District of Columbia law, cause of action for breach of contract accrued, and three-year limitations period began to run, when lessor substantially hindered lessee's exercise of purchase option, not when lessor notified lessee of its default and termination of contract. *Wash. Metro. Area Transit Auth. v. Quik Serve Foods, Inc.*, 402 F.Supp.2d 198, 2005 U.S. Dist. LEXIS 36130 (2005).

District of Columbia's choice of law rules required district court to apply District of Columbia's procedural laws, including its three-year statute of limitations for contract claims, in railroad's action against its excess liability insurers for indemnity and breach of contract, even though accident and underlying personal injury action occurred in Missouri. *AMTRAK v. Lexington Ins. Co.*, 357 F.Supp.2d 287, 2005 U.S. Dist. LEXIS 2282 (2005).

Licensor was informed of change in computation of royalty payments from sales of electrode cream in Canada in 1968, but failed to dispute change, and therefore, his claim brought in 1983 was barred by District of Columbia three-year statute of limitations. D.C. Code 1981, § 12-301(7, 8). *Friedman v. Manfuso*, 620 F. Supp. 109, 1985 U.S. Dist. LEXIS 22307 (1985).

Breach of contract claim filed by employee following her termination within two months after statutory period was time barred. D.C. Code 1981, § 12-301(7). *Parker v. National Corp. for Housing Partnerships*, 619 F. Supp.

1061, 1985 U.S. Dist. LEXIS 16573 (1985), reversed by 46 Fair Empl. Prac. Cas. (BNA) 1638 (D.C. Cir. June 2, 1987), dismissed by 697 F. Supp. 5, 1988 U.S. Dist. LEXIS 14380, 48 Fair Empl. Prac. Cas. (BNA) 890 (D.D.C. 1988).

Breach of contract cause of action by former member of cooperative association against association for the return of membership monies paid to become member of cooperative did not accrue, for purposes of three-year statute of limitations, until association resold member's dwelling unit; settlement statement received by member when he purchased the unit stated that a "seller may only receive funds as they are paid to the resale account by purchaser," implying that membership monies would not be returned to a departing cooperative member until a purchaser for the member's unit was found. *St. James Mut. Homes v. Andrade*, 951 A.2d 766, 2008 D.C. App. LEXIS 277 (2008).

On facts presented to Court of Appeals, the limitation period on each missed monthly payment for services rendered under contract between governmental relations firm and cable television facilities operator began to run separately, such that statute of limitations did not bar firm's action to recover installment payments that accrued within three years prior to firm's filing of action alleging that operator breached contract in which firm agreed to assist operator in obtaining government contracts. *Keefe Co. v. Americable Int'l, Inc.*, 755 A.2d 469, 2000 D.C. App. LEXIS 165 (2000), remanded by 219 F.3d 669, 343 U.S. App. D.C. 9, 2000 U.S. App. LEXIS 19966 (2000).

Complaint seeking rescission of settlement agreement and release entered into pursuant to previous action for breach of contract and enforcement of such contract which involved sale of option warranted to include strip-mining rights as well as mineral rights to certain coal land was subject to three-year statutory limit, where rescission action was directed at contract which was not under seal, regardless of whether claim was considered most analogous to simple contract action or some other action in tort. D.C. Code § 12-301(6-8). *Doolin v. Environmental Power, Ltd.*, 360 A.2d 493, 1976 D.C. App. LEXIS 315 (1976).

General three-year statute of limitations for bringing action on a contract did not bar hospital's claim for services rendered to decedent. D.C. Code §§ 12-301, 12-301(7), 12-305, 17-305(a). *Evans v. Washington Hospital Center, Inc.*, 298 A.2d 44, 1972 D.C. App. LEXIS 296 (1972).

Where claim of breach of contract was asserted both as matter of defense, i.e., recoupment and as affirmative cause of action on counterclaim it was to be tested by statute of limitations to extent that it went beyond matters of defense. D.C. Code §§ 12-301, 28:2-725(1, 2, 4); D.C. Code SCR, Civil Rule 15(c).

Sears, Roebuck & Co. v. Goudie, 290 A.2d 826, 1972 D.C. App. LEXIS 382 (1972), writ of certiorari denied by 409 U.S. 1049, 93 S. Ct. 523, 34 L. Ed. 2d 501, 1972 U.S. LEXIS 514 (1972).

— **Covenant or instrument under seal, limitation applicable to action.**

Rule that three-year period of limitation is applicable where real or personal property is injured and suits are brought to recover damages, whether contract (sealed or unsealed, written or oral) or tort be made legal vehicle of recovery does not render 12-year period of limitation on sealed instruments a nullity, inasmuch as 12-year period operates where suits on such instruments do not have as their purpose recovery of damages for injury to real or personal property. D.C. Code § 12-301. District of Columbia Armory Board v. Volkert, 402 F.2d 215, 1968 U.S. App. LEXIS 5617 (C.A.D.C. 1968).

Where a note was signed by a corporation by its secretary-treasurer, and corporate seal was impressed through the name of the corporation and that of the secretary-treasurer, and the instrument was on a printed stationer's form headed "Promissory note" and nowhere did the word or symbol "Seal" or "L.S." appear, and nowhere was there a recital that the instrument was "signed and sealed", intention of maker was not to create a specialty with its attendant liability for 12 years, but the seal would be deemed impressed for identification and as a mark of genuineness, and to give certain knowledge that note was an obligation of the corporation and no one else, and therefore, an action on such note was barred after three years. D.C. Code 1951, § 12-201. Sigler v. Mt. Vernon Bottling Co., 261 F.2d 378, 1958 U.S. App. LEXIS 3273 (C.A.D.C. 1958).

Where sealed agreement which gave plaintiffs option to purchase realty was mere evidence of debt owed by defendants to plaintiffs, and did not recite or mention indebtedness, suit to recover amount of indebtedness was not brought on option agreement, and twelve year statute of limitations applicable to suits on sealed instruments was inapplicable and did not extend time within which suit might be brought beyond that for bringing of ordinary contract actions. D.C. Code 1940, §§ 12-201, 12-205. Filson v. Fountain, 197 F.2d 383, 1952 U.S. App. LEXIS 2630 (C.A.D.C. 1952).

Where sealed agreement giving plaintiffs option to purchase realty was mere evidence of debt owed by defendants to plaintiffs, and did not recite or mention indebtedness, suit to recover amount of indebtedness was not brought on option agreement, and was barred by three-year limitation on contract actions. D.C. Code 1940, §§ 12-201, 12-205. Filson v.

Fountain, 197 F.2d 383, 1952 U.S. App. LEXIS 2630 (C.A.D.C. 1952).

Presence of corporate seal may not by itself make document "instrument under seal" subject to 12-year limitations period, as corporate seals are routinely employed for identification and as mark of genuineness, which use does not necessarily evince intention to create instrument under seal. D.C. Code 1981, § 12-301(6). Burgess v. Square 3324 Hampshire Gardens Apts., 691 A.2d 1153, 1997 D.C. App. LEXIS 59 (1997).

In order for document to be "instrument under seal" subject to 12-year limitations statute, something more than corporate seal is required, such as recitation that document is "signed and sealed." D.C. Code 1981, § 12-301(6). Burgess v. Square 3324 Hampshire Gardens Apts., 691 A.2d 1153, 1997 D.C. App. LEXIS 59 (1997).

Proprietary lease between tenant and corporate landlord, a housing cooperative, was "instrument under seal" within meaning of 12-year limitations statute applicable to instruments under seal; lease contained extensive attestation clause, which expressly stated that in witness of document, parties were, on part of corporation, affixing its corporate seal, and on part of tenant, setting his hand and seal, and lease was formal, printed document governing major legal transaction, i.e., lease of property for initial term of 55 years and renewable by tenant for successive terms of 100 years. D.C. Code 1981, § 12-301(6). Burgess v. Square 3324 Hampshire Gardens Apts., 691 A.2d 1153, 1997 D.C. App. LEXIS 59 (1997).

There is no requirement that proof of parties' intent to create sealed instrument be proved by extrinsic evidence in order for 12-year limitations period applicable to instruments under seal to apply, but rather, proper determination of whether document is under seal is limited in first instance to examination of face of document itself. D.C. Code 1981, § 12-301(6). Burgess v. Square 3324 Hampshire Gardens Apts., 691 A.2d 1153, 1997 D.C. App. LEXIS 59 (1997).

Promissory note for \$5,000 was not under seal, and thus action on note filed ten years after note matured was governed by three-year statute of limitations for simple debt rather than by 12-year statute, though deed of trust which parties simultaneously executed to secure loan bore the word "seal" next to lender's name, and though deed acknowledged the money owed and expressed "desire" on part of borrowers to secure prompt payment of the debt, where there was no seal on promissory note or extension document; references in deed of trust did not rise to level of independent covenant to repay debt. D.C. Code 1981, § 12-301. Huntley v. Bortolussi, 667 A.2d 1362, 1995 D.C. App. LEXIS 237 (1995).

Promissory note is not sealed for limitation purposes by virtue of simultaneously executed, sealed deed of trust securing the note unless deed contains an independent undertaking or covenant to pay the indebtedness. D.C. Code 1981, § 12-301. *Huntley v. Bortolussi*, 667 A.2d 1362, 1995 D.C. App. LEXIS 237 (1995).

Covenant not to sue was subject to 12-year statute of limitations [D.C. Code 1981, § 12-301(6)] and not three-year statute for underlying contract [D.C. Code 1981, § 12-301(8)] in that covenant not to sue was more than mere acknowledgement of prior debt where debtor received partial release of his liability and bank obtained additional collateral. *Spellman v. American Sec. Bank, N.A.*, 504 A.2d 1119, 1986 D.C. App. LEXIS 288 (1986).

Where note upon which suit was brought was under seal, the period of limitation was 12 years, not the three-year statute on simple contracts. *Ramey v. Burrascano*, 324 A.2d 687, 1974 D.C. App. LEXIS 264 (1974).

Conditional sales contract which had printed word "(Seal)" after buyer's signature was sealed instrument so that 12-year and not 3-year statute of limitations was applicable when seller's assignee sued buyer for deficiency which resulted when automobile was repossessed and resold. D.C. Code 1961, § 12-301. *Phillips v. A & C Adjusters, Inc.*, 213 A.2d 586, 1965 D.C. App. LEXIS 245 (App. 1965).

Conditional sales contract in which there prominently appeared language "witness my hand and seal" and in which word "seal" appeared in parenthesis opposite buyer's signature was sealed instrument subject to 12-year limitation and not simple contract subject to three-year limitation, notwithstanding buyer's ignorance of seal's significance. *Harrod v. Kelly Adjustment Co.*, 179 A.2d 431, 1962 D.C. App. LEXIS 275 (Cr.App. 1962).

Twelve-year limitation statute applying to action on contract under seal was applicable to suit brought by physician against medical service corporation for services rendered more than three years before suit was brought but less than twelve years, and not three-year limitation statute applicable to simple contracts, where contract, which was on printed form prepared by corporation, recited that parties affixed their seals thereto, and physician executed contract under seal, and corporation thereafter executed contract without impressing its corporate seal thereon. D.C. Code 1961, §§ 11-776(b), 12-201. *McNulty v. Medical Service of District of Columbia, Inc.*, 176 A.2d 783, 1962 D.C. App. LEXIS 236 (Cr.App. 1962).

Merely signing one's name next to a pre-printed word "(Seal)" on a contract places an instrument "under seal" within the context of paragraph (6); a notary public's seal is not

necessary. *Bankers Mut. Ins. Co. v. Davis*, 113 WLR 481 (Super. Ct. 1985).

— Equitable claims, limitation applicable to action.

Three-year statute of limitations for breach of contract claims in District of Columbia also applies to any equitable claims, such as unjust enrichment, arising from same conduct. D.C. Code 1981, § 12-301. *Construction Interior Sys., Inc. v. Donohoe Cos.*, 813 F. Supp. 29, 1992 U.S. Dist. LEXIS 20826 (1992).

— False arrest or imprisonment, limitation applicable to action.

Pro se arrestee's claims against city officials for false arrest, assault, and false imprisonment were governed by District of Columbia's one-year limitations period for such claims, rather than its three-year limitations period for suits concerning the recovery of personal property, even if arrestee's personal property was damaged or lost when he was arrested. *Roum v. Fenty*, 697 F.Supp.2d 39, 2010 U.S. Dist. LEXIS 26702 (2010).

Action seeking damages from corporation counsel for District of Columbia on ground that his failure to supervise processing of request for opinion as to validity of police regulation requiring a permit to give a speech in a public place caused the ten-month delay in its issuance and led to plaintiff's arrest under an unconstitutional regulation sounded in negligence, rather than false arrest and imprisonment; hence, applicable statute of limitations was the District's three-year period for negligence actions, rather than the one-year limitation period for false arrest. U.S. Const. Amends. 1, 4, 5; 18 U.S.C. § 1331(a); D.C. Code § 12-301(4, 8). *Shifrin v. Wilson*, 412 F. Supp. 1282, 1976 U.S. Dist. LEXIS 16230 (1976).

Arrestee's negligence claim against District of Columbia, to extent it was based on alleged negligence of arresting officers' superiors with respect to hiring, training, and supervising the officers, was separate and distinct from her false arrest claim, and thus, negligence claim was not recharacterization of false arrest claim, as would subject negligence claim to one-year limitations period for intentional tort claims, rather than three-year limitations period for negligence claims. *Stewart-Veal v. District of Columbia*, 896 A.2d 232, 2006 D.C. App. LEXIS 154 (2006).

Arrestee's negligence claim against District of Columbia, to extent it was based on actions of arresting officers and not on actions of their superiors, was not separate and distinct from her false arrest claim, and thus, negligence claim regarding officers' conduct was subject to one-year limitations period for intentional tort claims, rather than three-year limitations pe-

riod for negligence claims. *Stewart-Veal v. District of Columbia*, 896 A.2d 232, 2006 D.C. App. LEXIS 154 (2006).

— Fraud, limitation applicable to action.

Graduate student knew or had reason to know of her fraud claim against university premised on failure to award her credit hours she needed to complete her program, triggering District of Columbia's three-year limitations period, when she received e-mail from university stating that she was not eligible for graduation because she had not completed required credit hours. *Ling Yuan Hu v. George Wash. Univ.*, 766 F.Supp.2d 236, 2011 U.S. Dist. LEXIS 20472 (2011), affirmed by 2011 U.S. App. LEXIS 17663 (D.C. Cir. July 6, 2011).

Borrower knew or had reason to know of forged signature on loan application when she received loan that resulted from application, thereby triggering three-year statute of limitations, under District of Columbia law, for borrower to bring fraud claim against mortgage brokerage and its broker. *Pricer v. Deutsche Bank*, 842 F.Supp.2d 162, 2012 U.S. Dist. LEXIS 13509 (2012).

Under District of Columbia law, action for fraud must be brought within three years of time right to maintain action accrues. D.C. Code 1981, § 12-301(8). *Hawkins v. Greenfield*, 797 F. Supp. 30, 1992 U.S. Dist. LEXIS 12484 (1992).

Limitations period applicable to common-law claims for fraud based upon alleged deliberate undervaluation of assets and stock was three years. D.C. Code 1981, § 12-301(8). *Estate of Grant v. U.S. News & World Report, Inc.*, 639 F. Supp. 342, 1986 U.S. Dist. LEXIS 24248 (1986).

The statute of limitations for civil actions for fraud does not apply to will contests under the probate code. *Valentine v. Elliott* (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The proper limitation period for fraud claim is three years from the time the cause of action accrued. *Hendel v. World Health Plan Executive Council*, 124 WLR 957 (Super. Ct. 1996).

— Health care malpractice, limitation applicable to action.

Causes of action for allegedly faulty laminectomy by surgeon and allegedly careless post-operative care by hospital were each founded in negligence and thus governed by three-year limitation provision. D.C. Code § 12-301(8). *Canterbury v. Spence*, 464 F.2d 772, 1972 U.S. App. LEXIS 9467 (C.A.D.C. 1972).

Patient's cause of action against physician for negligent invasion by dereliction of duty to adequately disclose was governed by three-year

period of limitation applicable to negligence actions and was unaffected by fact that its alternative was barred by one-year period pertaining to batteries. D.C. Code § 12-301(4, 8). *Canterbury v. Spence*, 464 F.2d 772, 1972 U.S. App. LEXIS 9467 (C.A.D.C. 1972).

Limitation periods for medical malpractice actions are one year for battery actions and three years for those charging negligence. D.C. Code § 12-301(4, 8). *Canterbury v. Spence*, 464 F.2d 772, 1972 U.S. App. LEXIS 9467 (C.A.D.C. 1972).

Cause of action for medical malpractice accrued, and three-year limitations period began to run, when it was determined surgically that patient's illness was a result of diverticulitis and a ruptured diverticular abscess. *Hardi v. Mezzanotte*, 818 A.2d 974, 2003 D.C. App. LEXIS 140 (2003).

One-year statute of limitations applied to patient's claim that physician performed pelvis surgery without patient's consent, which was a claim that physician committed a common law battery. D.C. Code 1981, § 12-301(4). *Tavakoli-Nouri v. Gunther*, 745 A.2d 939, 2000 D.C. App. LEXIS 32 (2000).

Three-year statute of limitations applied to patient's claim of lack of informed consent with respect to physician's alleged negligence in failing to disclose the possible adverse consequences of knee surgery. D.C. Code 1981, § 12-301(8). *Tavakoli-Nouri v. Gunther*, 745 A.2d 939, 2000 D.C. App. LEXIS 32 (2000).

One-year statute of limitations for battery applied to cause of action against surgeon for alleged performance of unconsented-to tubal ligation during Caesarean section delivery; three-year statute of limitations for negligence did not apply. D.C. Code § 12-301(4). *Kelton v. District of Columbia*, 413 A.2d 919, 1980 D.C. App. LEXIS 278 (1980).

— In general.

Where cause of action with no prescribed statute of limitations is intertwined with one having a prescribed limitations period, District of Columbia courts apply prescribed period. *Browning v. Clinton*, 292 F.3d 235, 2002 U.S. App. LEXIS 11142 (C.A.D.C. 2002).

Where tax delinquent realty was deeded in 1936 to purchaser by District of Columbia during taxpayer's lifetime, action brought more than 12 years later by purchaser's assignee against District to recover money paid by way of consideration was barred by both the 3 and 12 year statutes of limitations applicable to sealed instruments and simple contracts respectively. D.C. Code 1940, § 12-201. *Cobb v. Shore*, 183 F.2d 980, 1950 U.S. App. LEXIS 3968 (C.A.D.C. 1950).

There are no limitations on claim of usury as a defense in a suit based on usurious obligations. D.C. Code 1940, §§ 12-201, 28-2704. *Hill*

v. Hawes, 144 F.2d 511, 1944 U.S. App. LEXIS 2869 (1944).

Under District of Columbia law, when cause of action with no prescribed statute of limitations is intertwined with one having prescribed limitations period, that prescribed period, rather than residual three-year limitations period, applies. *Jovanovic v. US-Algeria Bus. Council*, 561 F.Supp.2d 103, 2008 U.S. Dist. LEXIS 48412 (2008), affirmed by 2009 U.S. App. LEXIS 8668 (D.C. Cir. Apr. 22, 2009).

Under District of Columbia law, three-year statute of limitations for actions for which a limitation was not otherwise specially prescribed, and not one-year limitation period for assault, applied to Bivens action brought by arrestees, who alleged that their Fourth Amendment rights to be free from unreasonable searches were violated when they were strip searched following their arrests at a public protest; although the allegedly unconstitutional search was of arrestees' bodies and may have constituted an assault if not authorized by law, the harm transcended that of a mere assault. *Bame v. Clark*, 466 F.Supp.2d 105, 2006 U.S. Dist. LEXIS 88894 (2006), dismissed by 2007 U.S. App. LEXIS 13929 (D.C. Cir. June 11, 2007).

Qualified heir claimants were injured by attorney's failure to pursue federal estate tax refund based on overpayment of such taxes, and cause of action for legal malpractice occurred, for purposes of three-year limitations period, when IRS disputed efficacy of refund claim memorandum as informal administrative claim to protect all refund claims, which dispute required heirs to litigate matter with IRS. *Hillbroom v. PricewaterhouseCoopers LLP*, 17 A.3d 566, 2011 D.C. App. LEXIS 154 (2011).

Since no statute of limitations is specified for actions brought under the District of Columbia Consumer Protection Act, the residual three-year statute of limitations applies. *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 2008 D.C. App. LEXIS 296 (2008).

In a determination of the applicable statute of limitations, the plaintiff's characterization of the claim is not controlling, and courts must look beyond the conclusory terms of the pleadings to the substantive elements of any alleged causes of action. *Burgess v. Pelkey*, 738 A.2d 783, 1999 D.C. App. LEXIS 222 (1999), writ of certiorari denied by 529 U.S. 1099, 120 S. Ct. 1834, 146 L. Ed. 2d 778, 2000 U.S. LEXIS 3046, 68 U.S.L.W. 3684 (2000).

A rescission count in and of itself combines a legal cause of action with an equitable remedy, and therefore application of legal statute of limitations is appropriate. *Doolin v. Environmental Power, Ltd.*, 360 A.2d 493, 1976 D.C. App. LEXIS 315 (1976).

Where, in actions for amount due on contract, amended, reinstated counterclaim stated in

part a cause of action which could not relate back and was barred by limitation, but claim was also asserted as matter of defense, trial court's findings in favor of counterclaimant were sustained and by operation of law were treated as defeating amount allegedly due and owing on account. D.C. Code §§ 12-301, 28:2-725(1, 2, 4); D.C. Code SCR, Civil Rule 15(c). *Sears, Roebuck & Co. v. Goudie*, 290 A.2d 826, 1972 D.C. App. LEXIS 382 (1972), writ of certiorari denied by 409 U.S. 1049, 93 S. Ct. 523, 34 L. Ed. 2d 501, 1972 U.S. LEXIS 514 (1972).

Section 16-2342 does not apply to Uniform Reciprocal Enforcement Of Support Act (URESA) actions, and since no limitation is prescribed by URESA itself, such actions are governed by D.C. Code § 12-301(8) and must be filed within three years of accrual. *Davis v. Davis*, 123 WLR 333 (Super. Ct. 1995).

The statute of limitations in a URESA action was not tolled during the minority of the child because the right to bring this action accrued to the parent and not the child. *Davis v. Davis*, 123 WLR 333 (Super. Ct. 1995).

Action filed by the State of Connecticut pursuant to the Uniform Reciprocal Support Enforcement Act for reimbursement of funds paid on behalf of two minor children was subject to the 3-year statute of limitations of paragraph (8), and as applied to the State of Connecticut, the 3-year time limitation was not tolled during the minority of the two minor children by § 12-302(a)(1). D.C. v. P.L., 118 WLR 1729 (Super. Ct. 1990).

A child's right to maintain an action for child support is available to him or her throughout her minority, and the applicable limitation period does not begin to run until the child reaches the age of majority; additionally, absent a specific statutory limitation period, the general three-year period will apply. *Davis v. Davis*, 121 WLR 1721 (Super. Ct. 1993).

Cause of action by vendor against purchaser for reimbursement of sales taxes paid by the vendor under § 47-2003 is subject to the 3-year limitations period of subdivision (8). *J. Frogg, Ltd. v. Khambata*, 117 WLR 293 (Super. Ct. 1989).

— Injuries to person, limitation applicable to action.

Time for bringing action for recovery of injuries sustained by hotel tenant who alleged that, on two occasions, a person entered his room and assaulted him, would be three years from the time the right to maintain the action accrued. D.C. Code § 12-301(8). *Alley v. Dodge Hotel*, 501 F.2d 880, 1974 U.S. App. LEXIS 7505 (C.A.D.C. 1974).

Three-year limitation period applicable to a claim for personal injury under District of Columbia law applied to former graduate stu-

dent's claims against university and others under Title VI, Title IX, the Rehabilitation Act, and the ADA. *Mwabira-Simera v. Howard Univ.*, 692 F.Supp.2d 65, 2010 U.S. Dist. LEXIS 21955 (2010).

Three-year limitations period for residual or general personal injury actions of District of Columbia, where suit was brought, rather than two-year limitations period provided in Virginia law, where events occurred, applied to Bivens claim against United States Coast Guard captain in individual capacity. *Schwanner v. USCG Headquarters*, 588 F.Supp.2d 49, 2008 U.S. Dist. LEXIS 102127 (2008).

Issues of fact existed as to when woman was on inquiry notice that her infertility might be result of her in utero exposure to diethylstilbestrol (DES), precluding summary judgment on statute of limitations grounds in woman's products liability action against DES manufacturer. *Gassmann v. Eli Lilly & Co.*, 407 F.Supp.2d 203, 2005 U.S. Dist. LEXIS 38112 (2005).

District of Columbia's one-year statute of limitation for claims of libel, slander, assault, battery, mayhem, wounding, malicious prosecution, and false arrest or false imprisonment did not govern hotel patrons' claims against hotel, District of Columbia, and police officers for negligent supervision, intentional infliction of emotional distress, conversion, and negligent infliction of emotional distress, which were not enumerated in statute and thus were subject to District of Columbia's three-year residual limitations period. *Parker v. Grand Hyatt Hotel*, 124 F.Supp.2d 79, 2000 U.S. Dist. LEXIS 17024 (2000).

If claim of negligent or intentional infliction of emotional distress is intertwined with a tort enumerated under District of Columbia's one-year statute of limitation, such as assault or battery, the one-year limitation also will govern the emotional distress claim; otherwise, the three-year residual limitation period applies. *Parker v. Grand Hyatt Hotel*, 124 F.Supp.2d 79, 2000 U.S. Dist. LEXIS 17024 (2000).

Under District of Columbia law, three-year limitations period applicable to claims for which there is no specifically prescribed limitations period applies to emotional distress claim when that claim is intertwined with claims that also fall within the three-year statute of limitations, but when plaintiff has alleged the same acts to support both a claim for assault and battery, which is governed by one-year limitations period, and a claim for intentional infliction of emotional distress, the statute of limitations for both claims is the one-year time period applicable to plaintiff's assault and battery claim. D.C. Code 1981, § 12-301(4, 8). *Rendall-Speranza v. Nassim*, 942 F. Supp. 621, 1996 U.S. Dist. LEXIS 19710 (1996), reversed by 107 F.3d 913, 323 U.S. App. D.C. 280, 1997 U.S.

App. LEXIS 4720, 37 Fed. R. Serv. 3d (Callaghan) 12 (1997).

Under District of Columbia law, three-year statute of limitations applied to tenant's claim for intentional and negligent infliction of emotional distress since three-year limitations applied to underlying claims for breach of lease and fraud. D.C. Code 1981, § 12-301(7). *Hawkins v. Greenfield*, 797 F. Supp. 30, 1992 U.S. Dist. LEXIS 12484 (1992).

District of Columbia's one-year statute of limitations for libel and slander actions was applicable to invasion of privacy and intentional infliction of emotional distress claims. D.C. Code 1981, § 12-301(4). *Doe v. Southeastern University*, 732 F. Supp. 7, 1990 U.S. Dist. LEXIS 3141 (1990), appeal dismissed without opinion by 927 F.2d 1257, 288 U.S. App. D.C. 402 (1991).

Where claim of intentional infliction of emotional distress was intertwined with claims which fell within the District of Columbia's three-year limitations period, the three-year limitations period also applied to the emotional distress claim. D.C. Code 1981, § 12-301(8). *Burda v. National Asso. of Postal Supervisors*, 592 F. Supp. 273, 1984 U.S. Dist. LEXIS 15661 (1984), affirmed without opinion by 771 F.2d 1555, 248 U.S. App. D.C. 415 (1985).

District of Columbia one-year statute of limitation for actions for assault and battery did not apply to plaintiff's claim of intentional infliction of emotional distress. D.C. Code 1981, §§ 12-301, 12-301(4). *Stewart v. Thomas*, 538 F. Supp. 891, 1982 U.S. Dist. LEXIS 12312 (1982).

In actions alleging multiple tortious acts as a result of attack in Israel on bus containing numerous citizens of and visitors to Israel, counts alleging various torts claimed to be defined by international law were barred by District of Columbia one-year statute of limitations. D.C. Code 1973, § 12-301(4). *Hanoch Tel-Oren v. Libyan Arab Republic*, 517 F. Supp. 542, 1981 U.S. Dist. LEXIS 13199 (1981), affirmed by 726 F.2d 774, 233 U.S. App. D.C. 384, 1984 U.S. App. LEXIS 25809 (1984).

Claim of intentional infliction of emotional distress pled as clear and distinct tort stemming from verbal abuse by defendant, with alleged harm set forth as "extreme emotional, psychological and physical distress and discomfort," could not be characterized as sufficiently close to enumerated tort of assault as to make applicable one-year limitation for assault; thus, claim was governed by three-year residuary provision applicable to causes of action "for which a limitation is not otherwise specifically prescribed." D.C. Code 1981, § 12-301(4, 8). *Saunders v. Nemati*, 580 A.2d 660, 1990 D.C. App. LEXIS 229 (1990).

Independent action for intentional infliction of emotional distress, not intertwined with any of causes of action for which period of limitation

is specifically provided, is governed by general residuary three-year limitation. D.C. Code 1981, § 12-301(8). *Saunders v. Nemati*, 580 A.2d 660, 1990 D.C. App. LEXIS 229 (1990).

Where the underlying tort of plaintiff's claim for intentional infliction of emotional distress was an assault and battery, the applicable limitation period was one year as provided in subdivision (4). *de la Croix de Lafayette v. de la Croix de Lafayette*, 117 WLR 2133 (Super. Ct. 1989).

— Injuries to property, limitation applicable to action.

Where complaint by armory board against architectural firm was replete with references to fact that stadium had been substantially damaged by cracking in concrete structure and that board was entitled to be made whole for past and future costs of repairing such damage, purpose of action was to recover for an injury to real property, and three-year period of limitations governing injuries to real property, was applicable. D.C. Code § 12-301. *District of Columbia Armory Board v. Volkert*, 402 F.2d 215, 1968 U.S. App. LEXIS 5617 (C.A.D.C. 1968).

Preoccupation in statute pertaining to limitation of time for bringing actions with property injury claims as a distinct class reflects a policy that lawsuits involving them should be heard and disposed of with reasonable promptitude, both for reasons of efficiency in evidentiary exploration and because of undesirability of lengthening unduly into future unresolved shadows of such claims. D.C. Code § 12-301. *District of Columbia Armory Board v. Volkert*, 402 F.2d 215, 1968 U.S. App. LEXIS 5617 (C.A.D.C. 1968).

Where real or personal property is injured and suits are brought to recover damages, three-year period of limitations is applicable, whether contract (sealed or unsealed, written or oral) or tort be made legal vehicle of recovery, and not twelve-year period for suits on an instrument under seal. D.C. Code § 12-301. *District of Columbia Armory Board v. Volkert*, 402 F.2d 215, 1968 U.S. App. LEXIS 5617 (C.A.D.C. 1968).

Three-year general limitations period under District of Columbia law, rather than one year period for intentional torts, applied to Bivens claims by officer with United States Park Police (USPP), alleging violations of his Fourth and Fifth Amendment rights. *McDonald v. Salazar*, 831 F.Supp.2d 313, 2011 U.S. Dist. LEXIS 148041 (2011), motion denied by 2012 U.S. App. LEXIS 7200 (D.C. Cir. Apr. 10, 2012), affirmed in part by 2012 U.S. App. LEXIS 17490 (D.C. Cir. July 20, 2012).

— Intentional infliction of emotional distress, limitation applicable to action.

Under District of Columbia law, one-year statute of limitations, rather than three-year

limitations period, applied to plaintiff's claims of negligent and intentional infliction of emotional distress; claims were based on defendant's alleged conduct of falsely accusing plaintiff of stalking and harassment in order to cause plaintiff to be arrested and incarcerated, which were intertwined with the tort of malicious prosecution, which had one-year limitations period. *Rogers v. Johnson-Norman*, 466 F.Supp.2d 162, 2006 U.S. Dist. LEXIS 91637 (2006).

Defamation, assault, battery, false arrest, false light, and false imprisonment claims were time-barred under District of Columbia's one-year statute of limitations; furthermore, since there was no independent basis for plaintiffs' intentional infliction of emotional distress claim, it was subject to the one-year limitations period, rather than three year limitations period for residual tort claims. *Rynn v. Jaffe*, 457 F.Supp.2d 22, 2006 U.S. Dist. LEXIS 76140 (2006).

— Labor and employment claims, limitation applicable to action.

For purposes of determining timeliness of former government employee's presentation of claims to responsible government agencies under Federal Tort Claims Act (FTCA) pursuant to transitional provisions of Federal Employees Liability and Reform Tort Compensation Act of 1988, remand was necessary in order to allow former employee to clarify her negligence and intentional infliction of emotional distress claims so that court could determine whether either of them was independent enough from false statements to be governed by a District of Columbia statute of limitations other than that for libel and slander. 18 U.S.C. § 2679(d)(5); D.C. Code 1981, § 12-301(4). *Mittleman v. United States*, 104 F.3d 410, 1997 U.S. App. LEXIS 350 (C.A.D.C. 1997).

Six-month statute of limitations borrowed from the National Labor Relations Act (NLRA), rather than three-year statute of limitations governing contracts in the District of Columbia, applied to action brought by union under section of the Labor Management Relations Act (LMRA) seeking to compel employer to engage in arbitration concerning grievance filed on behalf of employee. *National Labor Relations Act*, § 10(b), as amended, 29 U.S.C. § 160(b); D.C. Code 1981, § 12-301(7); *Labor Management Relations Act*, 1947, § 301, 29 U.S.C. § 185. *Communications Workers v. American Tel. & Tel. Co.*, 10 F.3d 887, 1993 U.S. App. LEXIS 32736 (C.A.D.C. 1993).

Minnesota's two-year limitation on recovery of wages under any federal or state law was applicable as limitation on back pay recovery by airline stewardesses employed by Minnesota airline in that three-year District of Columbia statutes relied on by district court were not

designed to prevent sex discrimination or did not evince particular interest in preventing sex discrimination. D.C. Code 1981, §§ 12-301, 36-216; M.S.A. § 541.07(5); Civil Rights Act of 1964, § 706(d, e, g), as amended, 42 U.S.C. § 2000e-5(e), (f)(1), (g). *Laffey v. Northwest Airlines, Inc.*, 740 F.2d 1071, 1984 U.S. App. LEXIS 20327 (C.A.D.C. 1984), writ of certiorari denied by 469 U.S. 1181, 105 S. Ct. 939, 83 L. Ed. 2d 951, 1985 U.S. LEXIS 652, 53 U.S.L.W. 3507, 35 Empl. Prac. Dec. (CCH) P34855, 36 Fair Empl. Prac. Cas. (BNA) 1168, 102 Lab. Cas. (CCH) P34625, 27 Wage & Hour Cas. (BNA) 48 (1985).

In federal employee's action against his superiors under statute proscribing conspiracy to prevent public officers from performing their duties, court's focus was confined, under applicable statute of limitations, to a performance evaluation prepared by two of the defendants, and thus the complaint was dismissed as to the remaining defendants. D.C. Code 1973, § 12-301(8); 42 U.S.C. § 1985(1). *Lawrence v. Acree*, 665 F.2d 1319, 1981 U.S. App. LEXIS 17362 (C.A.D.C. 1981).

Former employee's claim for penalties under ERISA based on employer's retirement committee's failure to provide her with certain requested documents related to her retirement plan accrued when she received committee's response to her request for documents, where participant knew that response was deficient, and assumed that committee had provided her everything it was going to provide. *Walker v. Pharm. Research & Mfrs. of Am.*, 827 F.Supp.2d 8, 2011 U.S. Dist. LEXIS 141335 (2011).

One-year limitations period under District of Columbia Human Rights Act (DCHRA), not three-year statute of limitations governing breach of contract claims, would be borrowed for claim of interference with ERISA-protected rights. *Cox v. Graphic Commun. Conf. of the Int'l Bhd. of Teamsters*, 603 F.Supp.2d 23, 2009 U.S. Dist. LEXIS 25469 (2009).

One-year statute of limitations on employee's District of Columbia claims of sex discrimination, rather than District of Columbia's "catch-all" statute of limitations of three years, applied to employee's employment discrimination claim against employer. *Potts v. Howard Univ. Hosp.*, 598 F.Supp.2d 36, 2009 U.S. Dist. LEXIS 13147 (2009).

In District of Columbia, statute of limitations applicable to claim of wrongful discharge in violation of public policy is three-year "catch-all" statute of limitations. *Kamen v. IBEW*, 505 F.Supp.2d 66, 2007 U.S. Dist. LEXIS 59322 (2007).

While District of Columbia statute of limitations for claim for intentional infliction of emotional distress is three year residual limitations period, to extent emotional distress claim is intertwined with hostile work environment

claim, it assumes hostile work environment claim's one-year limitations period. *Bryant v. Orkand Corp.*, 407 F.Supp.2d 29, 2005 U.S. Dist. LEXIS 4894 (2005).

Even construing former employee's embezzlement allegations against former employer and three former coemployees as the tort of unlawful conversion, action was barred by District of Columbia three-year statute of limitations applicable to such actions. D.C. Code 1981, § 12-301(8). *Amariglio v. AMTRAK*, 941 F. Supp. 173, 1996 U.S. Dist. LEXIS 14040 (1996).

Three-year period of limitations under District of Columbia "catch all" statute, rather than six-month period application to actions under the National Labor Relations Act, was most appropriate limitations period on action brought by pilot for reinstatement and back pay under a "right of first hire" provision of the Airline Deregulation Act. *Airline Deregulation Act of 1978*, § 43, 49 U.S.C.App. § 1552; *National Labor Relations Act*, § 10(b), as amended, 29 U.S.C. § 160(b); D.C. Code 1981, § 12-301(8). *Crocker v. Piedmont Aviation*, 696 F. Supp. 685, 1988 U.S. Dist. LEXIS 15621 (1988), affirmed in part by, remanded by 49 F.3d 735, 311 U.S. App. D.C. 1, 1995 U.S. App. LEXIS 4236, 148 L.R.R.M. (BNA) 2743 (1995).

Action to confirm arbitration award was not subject to brief state statute of limitations applicable to motions to vacate arbitration awards; most applicable state limitation period was three-year period on simple contract, express or implied. D.C. Code 1981, § 12-301(7). *Local Union 26, International Brotherhood of Electrical Workers v. CWS Electric*, 669 F. Supp. 495, 1986 U.S. Dist. LEXIS 17293 (1986).

Even if profit-sharing plan document had been sealed instrument, limitations period for claim for benefits due under ERISA was three years, as provided for contract actions in District of Columbia Code, rather than 12 years which is limitations period applicable to contracts under seal. *Employee Retirement Income Security Act of 1974*, § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B); D.C. Code 1981, § 12-301(6, 7). *Estate of Grant v. U.S. News & World Report, Inc.*, 639 F. Supp. 342, 1986 U.S. Dist. LEXIS 24248 (1986).

Employee's allegation of intentional tort of wrongful discharge in violation of public policy was not actionable in District of Columbia and was time barred. D.C. Code 1981, § 12-301(8). *Parker v. National Corp. for Housing Partnerships*, 619 F. Supp. 1061, 1985 U.S. Dist. LEXIS 16573 (1985), reversed by 46 Fair Empl. Prac. Cas. (BNA) 1638 (D.C. Cir. June 2, 1987), dismissed by 697 F. Supp. 5, 1988 U.S. Dist. LEXIS 14380, 48 Fair Empl. Prac. Cas. (BNA) 890 (D.D.C. 1988).

Employee's allegation of breach of implied covenant of good faith and fair dealing, after

termination of her employment, was not actionable in District of Columbia and was barred by statute of limitations. D.C. Code 1981, § 12-301(8). *Parker v. National Corp. for Housing Partnerships*, 619 F. Supp. 1061, 1985 U.S. Dist. LEXIS 16573 (1985), reversed by 46 Fair Empl. Prac. Cas. (BNA) 1638 (D.C. Cir. June 2, 1987), dismissed by 697 F. Supp. 5, 1988 U.S. Dist. LEXIS 14380, 48 Fair Empl. Prac. Cas. (BNA) 890 (D.D.C. 1988).

Public employee's claims arising out of contracts with employer were time barred by District of Columbia law where action was brought five years after alleged breach. *Rail Passenger Service Act of 1970*, § 306(d), 45 U.S.C. § 546(d); D.C. Code 1981, § 12-301(7); Fed. Rules Civ. Proc. Rule 56(e), 18 U.S.C. *Foster v. National R. Passenger Corp.*, 610 F. Supp. 881, 1985 U.S. Dist. LEXIS 19215 (1985).

Employee's common-law claim that employer violated its fiduciary obligation by using dividends from employee benefit group life insurance plan to recoup voluntary contributions to the plan made by employer was barred by three-year District of Columbia statute of limitations where complaint for redress of pre-1975 acts was filed in September 1979, despite employee's contention that since she was asserting equitable right to redress breach of a fiduciary duty, question of time bar was governed by laches, in that employee had made no showing of due diligence in pursuing the action, and employee's request for reimbursement of past dividends was in nature of a claim for legal relief subject to statute of limitations. D.C. Code 1973, § 12-301(7, 8). *Corley v. Hecht Co.*, 530 F. Supp. 1155, 1982 U.S. Dist. LEXIS 9390 (1982).

Appropriate statute of limitations for former District of Columbia (DC) employee's disability discrimination claims against DC under Rehabilitation Act, which did not specify the applicable limitations period, was the one-year limitations period set out in District of Columbia's Human Rights Act (HRA) for claims of unlawful discrimination, as opposed to default choice of DC's three-year limitations period for personal injury claims; a Rehabilitation Act claim was far more similar to an HRA claim than it was to an ordinary personal injury claim, and borrowing HRA's limitations period would not stymie policies underlying Rehabilitation Act. *Jaiyeola v. District of Columbia*, 40 A.3d 356, 2012 D.C. App. LEXIS 135 (2012).

As a losing party in employment discrimination case before the Department of Human Rights (DHR), the District of Columbia Housing Authority (DCHA) was entitled to petition for review in the superior court of the DHR decision, where it was aggrieved by the administrative decision against it and filed its review petition within three years of the agency determination. *D.C. Hous. Auth. v. D.C. Office of*

Human Rights, 881 A.2d 600, 2005 D.C. App. LEXIS 459 (2005).

— Landlord and tenant, limitation applicable to action.

Under District of Columbia law, three-year statute of limitations applied to tenant's claims under lease, including breach of implied warranty of habitability, breach of duty to make repairs, and breach of covenant of quiet enjoyment. D.C. Code 1981, § 12-301(7). *Hawkins v. Greenfield*, 797 F. Supp. 30, 1992 U.S. Dist. LEXIS 12484 (1992).

The three-year statute of limitations did not bar tenant's recovery for housing code violations that continued past the cut-off date established by the statute of limitations; the statute only barred the recovery of damages suffered more than three years before the tenant filed suit. *Majerle Mgmt. v. Dist. of Columbia Rental Hous. Comm'n*, 768 A.2d 1003, 2001 D.C. App. LEXIS 58 (2001), vacated in part by, remanded by 777 A.2d 785, 2001 D.C. App. LEXIS 134 (D.C. 2001).

Three-year statute of limitations for negligence actions, rather than 12-year statute of limitations for actions involving instruments under seal, applied to shareholder's breach of contract suit against cooperative association for performing repairs to his apartment in a negligent manner, though clause in proprietary lease stated cooperative was liable for damages caused by its negligence. D.C. Code 1981, § 12-301. *Burgess v. Pelkey*, 738 A.2d 783, 1999 D.C. App. LEXIS 222 (1999), writ of certiorari denied by 529 U.S. 1099, 120 S. Ct. 1834, 146 L. Ed. 2d 778, 2000 U.S. LEXIS 3046, 68 U.S.L.W. 3684 (2000).

— Legal malpractice, limitation applicable to action.

Additional discovery was warranted prior to ruling on motions for summary judgment filed by law firms and attorneys in legal malpractice action asserting that clients' claims based on their failure to file translation of their patent application were barred by statute of limitations, where clients claimed that did not have any knowledge of any injury resulting from attorneys' failure to file until, at earliest, date on which Federal Circuit denied their petition for panel rehearing, and parties had yet to engage in discovery. *Seed Co. v. Westerman*, 840 F.Supp.2d 116, 2012 U.S. Dist. LEXIS 1222 (2012).

Under District of Columbia law, a legal malpractice claim must be brought within three years from the time the right to maintain the cause of action accrues. *Mawalla v. Hoffman*, 569 F.Supp.2d 253, 2008 U.S. Dist. LEXIS 60774 (2008).

Under District of Columbia law, the statute of limitations governing a legal malpractice

claim is three years. *Gallucci v. Schaffer*, 507 F.Supp.2d 85, 2007 U.S. Dist. LEXIS 63050 (2007), affirmed by 2008 U.S. App. LEXIS 3235 (D.C. Cir. Feb. 11, 2008).

Under District of Columbia law, claims for breach of fiduciary duty and for legal malpractice must be raised within three years of the victims' discovery of the breach. *Alberts v. Tuft* (In re Greater Southeast Cmty. Hosp. Corp.), 333 B.R. 506, 2005 Bankr. LEXIS 2186 (2005), dismissed in part by 353 B.R. 324, 2006 Bankr. LEXIS 2419 (Bankr. D.D.C. 2006).

Limitations period for client's legal malpractice claim against attorney, relating to dismissal, as time-barred under insurance contract, of her underlying action against long-term-disability (LTD) insurer which had denied her claim for LTD benefits, was not tolled during pendency of client's post-dismissal motion for reconsideration of the dismissal, which motion had been treated by the trial court, in the underlying action, as a motion to alter or amend judgment, even if there was no final, appealable judgment until trial court denied that motion. *Bleck v. Power*, 955 A.2d 712, 2008 D.C. App. LEXIS 381 (2008).

Where attorney was employed to prosecute client's claim for damages because of alleged illegal confinement in hospital and case was tried in April, 1939, action instituted by client in April, 1944, against attorney for alleged breach of contract and breach of professional duty was barred by three-year statute of limitations. D.C. Code 1940, § 12-201. *Case v. Ricketts*, 41 A.2d 304, 1945 D.C. App. LEXIS 81 (Cr.App. 1945).

— Libel and slander, limitation applicable to action.

Under District of Columbia law, where prospective author's tortious interference claim against former President's aide was intertwined with defamation claim against aide, and had no basis, as to aide herself, apart from aide's allegedly defamatory statements, tortious interference claim was subject to same one-year statute of limitations applicable to defamation claim, and had to be dismissed as time-barred. *Browning v. Clinton*, 292 F.3d 235, 2002 U.S. App. LEXIS 11142 (C.A.D.C. 2002).

Complaint wherein plaintiff church alleged that, as a result of a memorandum prepared and disseminated by defendant federal employees, church and those associated with it were subjected to an eight-year program of harassment and discrimination by government sounded only in defamation and, hence, was time barred under applicable statute of limitations. D.C. Code § 12-301(4). *Church of Scientology v. Foley*, 640 F.2d 1335, 1981 U.S. App. LEXIS 21195 (C.A.D.C. 1981).

Under District of Columbia law, international business council member's fraud claim

against council was not intertwined with his defamation claim, and thus was subject to residual three-year limitations period, rather than one-year statute of limitations for defamation claims, even though member referred to some passages of allegedly libelous correspondence from council's chairman in support of both his fraud and defamation claims, where fraud claim involved additional elements beyond those required for his defamation claim, including his allegations that he reasonably relied to his detriment upon the representations included in correspondence. *Jovanovic v. US-Algeria Bus. Council*, 561 F.Supp.2d 103, 2008 U.S. Dist. LEXIS 48412 (2008), affirmed by 2009 U.S. App. LEXIS 8668 (D.C. Cir. Apr. 22, 2009).

Under District of Columbia law, international business council member's claims against council for tortious interference with contract and prospective business advantage and intentional infliction of emotional distress were intertwined with his defamation claim, and thus were subject to one-year statute of limitations for defamation claims, rather than residual three-year limitations period, where defamation claim alleged that correspondence from council's chairman included false statements that member had made significant misrepresentations, had uneven history regarding monetary obligations, and did not have business or personal relations with individuals and entities affiliated with council, tortious interference claims alleged that, as result of allegedly false correspondence, Algerian government decided not to use member's company for development of highway project, and intentional infliction of emotional distress claim alleged that member suffered severe emotional distress upon reading allegedly false statements. *Jovanovic v. US-Algeria Bus. Council*, 561 F.Supp.2d 103, 2008 U.S. Dist. LEXIS 48412 (2008), affirmed by 2009 U.S. App. LEXIS 8668 (D.C. Cir. Apr. 22, 2009).

Under District of Columbia law, one-year statute of limitations applied to employee's defamation claims against her former employer. *Turner v. Fed. Express Corp.*, 539 F.Supp.2d 404, 2008 U.S. Dist. LEXIS 24823 (2008).

Alleged misrepresentations by non-profit organization to the public, through organization's published analytical reports and organization's web site, that organization was organized under laws of Belgium and that Belgium was the place from which the organization published its allegedly defamatory communications, did not relate to the elements of the defamation claims asserted by Serbian businessman and his affiliated companies, relating to organization's published analytical report and an e-mail sent by organization's employee to the then-Vice-President of Serbia, and thus, organization was not equitably estopped from asserting protection

under District of Columbia's one-year limitations period for defamation claims, though the alleged misrepresentations allegedly caused businessman and his companies to initially file their defamation complaint in Belgian court rather than in District of Columbia. *Jankovic v. Int'l Crisis Group*, 429 F.Supp.2d 165, 2006 U.S. Dist. LEXIS 24520 (2006), affirmed in part and reversed in part by, remanded by 494 F.3d 1080, 377 U.S. App. D.C. 434, 2007 U.S. App. LEXIS 17511 (2007), remanded by 593 F.3d 22, 389 U.S. App. D.C. 170, 2010 U.S. App. LEXIS 1978, 38 Media L. Rep. (BNA) 1399 (2010).

Plaintiffs' claims, under District of Columbia law, for false light invasion of privacy and tortious interference with business expectancy were subject to District's one-year statute of limitations for a defamation claim; District did not have express limitations period for false light or tortious interference claims, and plaintiffs' false light and tortious interference claims were intertwined with their defamation claim. *Jankovic v. Int'l Crisis Group*, 429 F.Supp.2d 165, 2006 U.S. Dist. LEXIS 24520 (2006), affirmed in part and reversed in part by, remanded by 494 F.3d 1080, 377 U.S. App. D.C. 434, 2007 U.S. App. LEXIS 17511 (2007), remanded by 593 F.3d 22, 389 U.S. App. D.C. 170, 2010 U.S. App. LEXIS 1978, 38 Media L. Rep. (BNA) 1399 (2010).

One-year statute of limitations for libel claims in District of Columbia applies to defamation claims as well. *Dove v. Wash. Metro. Area Transit Auth.*, 402 F.Supp.2d 91, 2005 U.S. Dist. LEXIS 17954 (2005), affirmed by 2006 U.S. App. LEXIS 6184 (D.C. Cir. Mar. 13, 2006).

Under District of Columbia law, because statute of limitations for defamation claims runs from date of original publication, any subsequent sale or delivery of copy of publication does not create new cause of action. *Jin v. Ministry of State Sec.*, 254 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 4372 (2003).

Under District of Columbia law, statute of limitations for Falun Gong practitioners' defamation claims against Chinese television corporation was not tolled by corporation's re-broadcasts or dissemination of footage of allegedly defamatory staged news event in United States. *Jin v. Ministry of State Sec.*, 254 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 4372 (2003).

Under District of Columbia law, one-year statute of limitations for libel and slander claims applied to defamation claim. *Thompson v. Jasas Corp.*, 212 F.Supp.2d 21, 2002 U.S. Dist. LEXIS 13266 (2002).

Former employee did not allege conduct which fell within one year statute of limitations under District of Columbia law for defamation claims, and, thus, claim was time barred, where employee supplied no dates for time

period in which conduct took place and did not defend statute of limitations defect which defendants brought up on motions to dismiss. *Thompson v. Jasas Corp.*, 212 F.Supp.2d 21, 2002 U.S. Dist. LEXIS 13266 (2002).

Limitations period for bringing defamation claim in District of Columbia is one year. *Stith v. Chadbourne & Parke, LLP*, 160 F.Supp.2d 1, 2001 U.S. Dist. LEXIS 12857 (2001).

Portions of federal employee's emotional distress and negligence claims based on the creation, maintenance, and dissemination of the allegedly false Inspector General (IG) and Office of Personnel Management (OPM) reports, the dissemination of suspicions that employee had been going through papers in Treasury employee's office and that she was the source of news leaks, and Secret Service document were subject to District of Columbia's one-year statute of limitations for libel and slander and were therefore untimely. D.C. Code 1981, § 12-301(4). *Mittleman v. United States*, 997 F. Supp. 1, 1998 U.S. Dist. LEXIS 2579 (1998), affirmed by 1998 U.S. App. LEXIS 28527 (D.C. Cir. Oct. 15, 1998), affirmed by 1998 U.S. App. LEXIS 28549 (D.C. Cir. Oct. 15, 1998).

District of Columbia's one-year limitations statute applicable to defamation claims, rather than three-year statute applicable to acts for which limitation is not otherwise specifically prescribed, applied to invasion of privacy claim, particularly as plaintiff did not argue that action was anything other than defamatory in nature. D.C. Code 1981, § 12-301(4, 8). *Gruneth v. Marriott Corp.*, 872 F. Supp. 1069, 1995 U.S. Dist. LEXIS 6391 (1995), affirmed by 1996 U.S. App. LEXIS 3688 (D.C. Cir. Feb. 9, 1996).

Plaintiff's defamation action filed at least two years after defendants published alleged defamatory remarks was barred by District of Columbia's one-year statute of limitations. D.C. Code 1981, § 12-301(4). *Wiggins v. Philip Morris, Inc.*, 853 F. Supp. 458, 1994 U.S. Dist. LEXIS 7103 (1994).

Under District of Columbia law, where claim for publication of defamatory and false material was covered by one-year limitations period for libel, claim for intentional infliction of emotional distress based on that publication was also covered by one-year period. D.C. Code 1981, § 12-301. *Foretich v. Glamour*, 741 F. Supp. 247, 1990 U.S. Dist. LEXIS 3544 (1990).

Under District of Columbia law, antinuclear demonstrators' claims of conspiracy by newspaper defendants to libel and assault demonstrators were subject to one-year limitations period applicable to libel and assault claims. D.C. Code 1981, § 12-301(4). *Thomas v. News World Communications*, 681 F. Supp. 55, 1988 U.S. Dist. LEXIS 1308 (1988), dismissed by 696 F. Supp. 702, 1988 U.S. Dist. LEXIS 10516 (D.D.C. 1988).

District of Columbia's one-year limitations period applicable to common-law claims for libel, defamation and assault or battery also applied to claims for intentional infliction of emotional distress that were based on allegations of libel, defamation or assault. D.C. Code 1981, § 12-301(4). *Thomas v. News World Communications*, 681 F. Supp. 55, 1988 U.S. Dist. LEXIS 1308 (1988), dismissed by 696 F. Supp. 702, 1988 U.S. Dist. LEXIS 10516 (D.D.C. 1988).

Defamation allegations based on events which occurred more than one year before complaint was filed were barred by relevant statute of limitations of the District of Columbia. D.C. Code 1981, § 12-301(4). *Provisional Government of Republic v. American Broadcasting Cos.*, 609 F. Supp. 104, 1985 U.S. Dist. LEXIS 20757 (1985).

Cause of action of real estate developer, who in essence claimed that he and another held title to lots in question and continued to be engaged in business of developing that property, and who contended that another property owner and his attorney had maliciously interfered with his efforts to develop his property by attempting to defeat or delay alley closing and exception to zoning restrictions on building heights that were absolutely essential to property development, was not for defamation but rather was for interference with prospective advantage and thus was not barred by one-year statute of limitations applicable to defamation suits. D.C. Code § 12-301(4). *Carr v. Brown*, 395 A.2d 79, 1978 D.C. App. LEXIS 578 (1978).

— Penalties and forfeitures, limitation applicable to action.

Action under District of Columbia Emergency Rent Act to recover double amount of rent paid in excess of maximum rent ceiling was not an action for "penalty or forfeiture" within one year limitation statute, since Act creates obligation to pay compensatory damages and not a penalty. D.C. Code 1940, §§ 12-201, 45-1601 et seq., 45-1610. *Heitmuller v. Berkow*, 165 F.2d 961, 1948 U.S. App. LEXIS 1977 (1948).

One-year limitations period governing actions for statutory penalty or forfeiture under D.C. Code 1981, § 12-301(5) applies to libel actions for forfeiture brought by District of Columbia under D.C. Code 1981, § 22-1505(c), governing forfeitures of money related to gambling. *Ward v. District of Columbia*, 494 A.2d 666, 1985 D.C. App. LEXIS 412 (1985).

District of Columbia government had right to resist return of defendant's property pursuant to plea agreement with assistant United States attorney, under which \$750 of money seized in search of premises was to be returned to defendant in exchange for defendant's guilty plea to maintaining gambling premises, even though demand therefor was made before libel action

was commenced, where only District's corporation counsel's office could consent to release of money seized in gambling raid, and libel action which was brought two and one-half months after entry of plea, was within reasonable time and within statutory period of limitation. D.C. Code §§ 12-301(5), 22-1505, 22-1505(c)(3). *Peak v. United States*, 419 A.2d 1006, 1980 D.C. App. LEXIS 365 (1980).

An action to recover double amount of rent paid in excess of maximum rent ceiling prescribed by District of Columbia Emergency Rent Act was to recover for a private wrong, and was not for a statutory "penalty or forfeiture", and, hence, three year and not one year statute of limitations was applicable. D.C. Code 1940, §§ 12-201, 45-1610. *Shenk v. Cohen*, 51 A.2d 298, 1947 D.C. App. LEXIS 108 (Cr.App. 1947).

— Recovery of real property, limitation applicable to action.

In absence of specific statute of limitations on foreclosure or redemption of mortgage, 15-year statute of limitations for recovery of land is applied. D.C. Code 1961, § 12-301(1). *Davis v. Stone*, 236 F. Supp. 553, 1964 U.S. Dist. LEXIS 8666 (D.D.C.1964).

— Securities or corporations, limitation applicable to action.

Three-year District of Columbia general fraud statute of limitations applied to securities fraud suit arising out of conduct occurring prior to Court of Appeals decision in *Forrestal Village, Inc. v. Graham*, in which court ruled that two-year District of Columbia blue sky law statute of limitation was applicable to such suits. Securities Exchange Act of 1934, § 10(b) as amended 15 U.S.C. § 78j(b); Securities Act of 1933, § 17(a), 15 U.S.C. § 77q(a); D.C. Code §§ 2-2413(e), 12-301(8). *Wachovia Bank & Trust Co., N. A. v. National Student Marketing Corp.*, 650 F.2d 342, 1980 U.S. App. LEXIS 11694 (C.A.D.C. 1980), writ of certiorari denied by 452 U.S. 954, 101 S. Ct. 3098, 101 S. Ct. 3099, 69 L. Ed. 2d 965, 1981 U.S. LEXIS 2690, 49 U.S.L.W. 3931 (1981).

Two-year statute of limitations contained in District of Columbia blue sky law which creates civil cause of action in favor of buyer of securities sold by means of materially false or misleading statement or by means of statements containing material omissions, not the District of Columbia three-year statute of limitations governing common-law fraud actions, applied to action charging violation of statute prohibiting fraudulent interstate transactions in securities and statute prohibiting manipulative and deceptive devices in connection with purchase or sale of registered securities. Securities Act of 1933, § 17(a), 15 U.S.C. § 77q(a); Securities Exchange Act of 1934, § 10(b), 15 U.S.C.

§ 78j(b); D.C. Code §§ 2-2413, 12-301(8). *Forrestal Village, Inc. v. Graham*, 551 F.2d 411, 1977 U.S. App. LEXIS 10563 (C.A.D.C. 1977).

Statute of limitations on claim, by securities brokerage customer, that National Association of Securities Dealers, Inc. (NASD) committed professional negligence by improperly changing venue for arbitration of claims against broker, began to run on date that customer received notice of venue change. *Bradley v. NASD Dispute Resolution, Inc.*, 245 F.Supp.2d 17, 2003 U.S. Dist. LEXIS 1618 (2003), affirmed by 433 F.3d 846, 369 U.S. App. D.C. 79, 2005 U.S. App. LEXIS 28987 (2005).

Statute of limitations on claim, by securities brokerage customer, that National Association of Securities Dealers, Inc. (NASD) committed professional negligence by improperly delaying arbitration proceedings on customer's claims against broker, began to run on date that customer received notice of cancellation of hearing and rescheduling six months later. *Bradley v. NASD Dispute Resolution, Inc.*, 245 F.Supp.2d 17, 2003 U.S. Dist. LEXIS 1618 (2003), affirmed by 433 F.3d 846, 369 U.S. App. D.C. 79, 2005 U.S. App. LEXIS 28987 (2005).

Statute of limitations on claim, by securities brokerage customer, that National Association of Securities Dealers, Inc. (NASD) committed professional negligence by tolerating improper discovery requests made by customer's broker in course of arbitration of customer's claims, on date that first of series of allegedly improper discovery requests was made. *Bradley v. NASD Dispute Resolution, Inc.*, 245 F.Supp.2d 17, 2003 U.S. Dist. LEXIS 1618 (2003), affirmed by 433 F.3d 846, 369 U.S. App. D.C. 79, 2005 U.S. App. LEXIS 28987 (2005).

Statute of limitations on claim, by securities brokerage customer, that National Association of Securities Dealers, Inc. (NASD) committed professional negligence by denying her access to file regarding arbitration proceeding involving claims against her broker, began to run on day that customer requested and was refused access at NASD's office. *Bradley v. NASD Dispute Resolution, Inc.*, 245 F.Supp.2d 17, 2003 U.S. Dist. LEXIS 1618 (2003), affirmed by 433 F.3d 846, 369 U.S. App. D.C. 79, 2005 U.S. App. LEXIS 28987 (2005).

Claims of fraud, abuse of process, and intentional infliction of emotional distress, brought by securities brokerage customer against National Association of Securities Dealers, Inc. (NASD) based upon mishandling of arbitration proceedings against her broker, began to run on same dates as expired claims of professional negligence against NASD, with which they were intertwined. *Bradley v. NASD Dispute Resolution, Inc.*, 245 F.Supp.2d 17, 2003 U.S. Dist. LEXIS 1618 (2003), affirmed by 433 F.3d

846, 369 U.S. App. D.C. 79, 2005 U.S. App. LEXIS 28987 (2005).

Mistake as ground for relief.

Statute of limitations did not begin to run against action by purchasers of timber on a tract for abatement of part of purchase price because of inclusion of 12 acres belonging to adjoining landowner in the tract due to a mistaken belief as to correct starting point of boundary line until discovery of the mistake. *Hodde v. Chaney*, 139 A.2d 510, 1958 D.C. App. LEXIS 229 (Cr.App. 1958).

Part payment.

Generally, part payment on debt tolls statute of limitations. *Dulberger v. Lippe*, 202 A.2d 777, 1964 D.C. App. LEXIS 263 (App. 1964).

A part payment sufficient to toll statute of limitations need not be in money, but may be anything of value so long as treated by the parties as a payment on account. *Tendler v. L. E. Massey, Inc.*, 33 A.2d 626, 1943 D.C. App. LEXIS 178 (Cr.App. 1943).

Pendency of proceedings and equitable tolling.

University's grievance procedures did not toll District of Columbia's three-year contract statute of limitations with regard to associate professor's breach of contract claims arising from denial of promotion to full professorship; faculty code made mandatory at most preliminary grievance procedures, did not require institution of formal proceedings, and did not suggest that grievance procedures were exclusive remedy. D.C. Code 1981, § 12-301(7). *Kyriakopoulos v. George Washington University*, 866 F.2d 438, 1989 U.S. App. LEXIS 279 (C.A.D.C. 1989).

Those causes of action for commercial misdeeds which were brought against foreign government and its instrumentalities which were based on events occurring on or before March 1975 were barred by District of Columbia's three-year statute of limitations; running of statute was not tolled until enactment of Foreign Sovereign Immunities Act, as plaintiff was not effectively barred from any action before that date. D.C. Code 1981, § 12-301; 18 U.S.C. §§ 1330, 1332(a)(2-4), 1391(f), 1441(d), 1602-1611. *Gilson v. Republic of Ireland*, 682 F.2d 1022, 1982 U.S. App. LEXIS 17406 (C.A.D.C. 1982).

Applicable statute of limitations for purposes of statute providing that all persons within United States shall have same right to make and enforce contracts as is enjoyed by white citizens should be considered tolled when complaint is made to Equal Employment Opportunity Commission. Civil Rights Act of 1964, §§ 702-716(c), 42 U.S.C. §§ 2000e-1 to

2000e-15 and § 1981; D.C. Code § 12-301(7, 8). *Macklin v. Spector Freight Systems, Inc.*, 478 F.2d 979, 1973 U.S. App. LEXIS 10026 (C.A.D.C. 1973).

Three-year District of Columbia statute of limitations was not tolled by attorney's filing of suit against clients in Ohio to recover fee. D.C. Code § 12-301(7). *Brown v. Lamb*, 414 F.2d 1210, 1969 U.S. App. LEXIS 11460 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 907, 90 S. Ct. 904, 25 L. Ed. 2d 88, 1970 U.S. LEXIS 2977 (1970).

District of Columbia statutes of limitations applicable in §§ 1983 actions may be tolled when complainant is imprisoned at time right of action accrues; however, statutes of limitations will not be tolled for person released from custody and then rearrested on separate charge. *Arnold v. District of Columbia*, 211 F.Supp.2d 144, 2002 U.S. Dist. LEXIS 13709 (2002).

District of Columbia statutes of limitations applicable to traffic-stop arrestee's §§ 1983 action against District and arresting officers, alleging excessive force and other rights violations and torts, were not tolled by arrestee's incarceration for felony gun possession that was subsequent and unrelated to traffic stop; arrestee had been released from custody for two weeks following traffic stop before weapons arrest. *Arnold v. District of Columbia*, 211 F.Supp.2d 144, 2002 U.S. Dist. LEXIS 13709 (2002).

Equitable tolling of District of Columbia statute of limitations was inappropriate in arrestee's §§ 1983 excessive force claim against District and police officers, absent justification for delay in filing action, regardless of fact that once released from custody arrestee was rearrested on unrelated weapons charge two weeks later and subsequently imprisoned; arrestee actually filed initial §§ 1983 action after second arrest, but withdrew it to seek counsel, then waited more than three years to write to police internal affairs officer about investigating his claims, and another two years before filing suit. *Arnold v. District of Columbia*, 211 F.Supp.2d 144, 2002 U.S. Dist. LEXIS 13709 (2002).

Equitable tolling of statute of limitations applicable to §§ 1983 action does not apply absent some justification for plaintiff's failure to file timely. *Arnold v. District of Columbia*, 211 F.Supp.2d 144, 2002 U.S. Dist. LEXIS 13709 (2002).

A court can equitably toll the statute of limitations, but its power to do so will be exercised only in extraordinary and carefully circumscribed instances. *Wiggins v. State Farm Fire & Cas. Co.*, 153 F.Supp.2d 16, 2001 U.S. Dist. LEXIS 11063 (2001).

The plaintiff will not be allowed extra time to file unless he has exercised due diligence, and

the plaintiff's excuse must be more than a garden variety claim of excusable neglect. *Wiggins v. State Farm Fire & Cas. Co.*, 153 F.Supp.2d 16, 2001 U.S. Dist. LEXIS 11063 (2001).

Judgment debtor who brought action against judgment creditor for malicious prosecution, alleging that creditor wrongfully obtained default judgment against him, could not show that he exercised due diligence, or that there were extraordinary circumstances, so that District Court could grant equitable tolling of limitations period for malicious prosecution; debtor knew that creditor had improperly obtained default judgment against him on date default judgment was entered, and two year delay in filing action was inexcusable. *Wiggins v. State Farm Fire & Cas. Co.*, 153 F.Supp.2d 16, 2001 U.S. Dist. LEXIS 11063 (2001).

Doctrine of equitable tolling did not apply to untimely assault and battery claims asserted by municipal employee against municipality absent any justification for employee's failure to timely file her claims. D.C. Code 1981, § 12-301(4). *Williams v. District of Columbia*, 916 F. Supp. 1, 1996 U.S. Dist. LEXIS 1338 (1996).

Factual issues existed on whether circumstances warranted equitable tolling of three-year District of Columbia statute of limitations on action against attorney who allegedly received improper payments from savings and loan association and its subsidiary and, therefore, dismissal would be premature. D.C. Code 1981, § 12-301(8). *Resolution Trust Corp. v. Gardner*, 788 F. Supp. 26, 1992 U.S. Dist. LEXIS 3618 (1992).

One-year statute of limitation applicable to plaintiff's claims of assault and battery was tolled when plaintiff filed suit against defendant in superior court of the District of Columbia alleging assault and battery, outrage and intentional infliction of emotional distress, since plaintiff had filed her claims in the superior court to insure that her causes of action would not expire before she could attach them to the Title VII case under the doctrine of pendent jurisdiction. D.C. Code 1981, §§ 12-301, 12-301(4); Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C. § 2000e et seq. *Stewart v. Thomas*, 538 F. Supp. 891, 1982 U.S. Dist. LEXIS 12312 (1982).

Former employee's filing of appeal to Civil Service Commission from his dismissal did not toll statute of limitations with respect to action for alleged conspiracy to deprive him of his job. D.C. Code § 12-301(8). *Fitzgerald v. Seamans*, 384 F. Supp. 688, 1974 U.S. Dist. LEXIS 6366 (1974), affirmed in part by 553 F.2d 220, 180 U.S. App. D.C. 75, 1977 U.S. App. LEXIS 14625 (1977).

Pendency of wrongful death action did not toll statute of limitations on claim under Survival Act. D.C. Code §§ 12-101, 12-301, 16-2701

et seq. *Wharton v. Jones*, 285 F. Supp. 634, 1968 U.S. Dist. LEXIS 9207 (D.D.C.1968).

District of Columbia's residuary three-year statute of limitations was not tolled by filing of involuntary bankruptcy petition, as filing of involuntary petition was not "order for relief" within meaning of Bankruptcy Code subsection on extension of time. D.C. Code 1981, § 12-301(8); Bankr.Code, 11 U.S.C. § 108(a)(2). *Rothenberg v. Ralph D. Kaiser Co.* (In re *Rothenberg*), 173 B.R. 4, 1994 Bankr. LEXIS 1435 (1994).

Under doctrine of equitable tolling, statutes of limitation are tolled until the plaintiff, employing due diligence, could have discovered the facts that were fraudulently concealed. *Morton v. National Med. Enters.*, 725 A.2d 462, 1999 D.C. App. LEXIS 21 (1999).

Equitable tolling, when applicable, does not extend the statute of limitations indefinitely; plaintiff is required to bring suit within reasonable time after she obtains, or by due diligence could obtain, the information necessary to pursue the claim, and unless plaintiff does so, she cannot avoid the bar of limitations. *East v. Graphic Arts Indus. Joint Pension Trust*, 718 A.2d 153, 1998 D.C. App. LEXIS 189 (1998).

District of Columbia law does not recognize the concept of equitable tolling. D.C. Code 1981, § 12-301(8). *Johnson v. Marcheta Investors Ltd. Pshp.*, 711 A.2d 109, 1998 D.C. App. LEXIS 97 (1998).

Under doctrine of "equitable tolling", statutes of limitations apply only where purposes underlying them—specifically, avoiding stale claims and ensuring other party's ability adequately to prepare and defend case—are met. *Sayyad v. Fawzi*, 674 A.2d 905, 1996 D.C. App. LEXIS 64 (1996).

District of Columbia statute of limitations was not subject to equitable tolling while negotiations led to joint waiver of arbitration under Maryland Health Care Malpractice Claims (HCMC) Act. D.C. Code 1981, §§ 12-301(8), 16-2702; Md.Code, Courts and Judicial Proceedings, § 3-2A-01 et seq. *Huang v. D'Albora*, 644 A.2d 1, 1994 D.C. App. LEXIS 98 (1994).

Three-year statute of limitations applicable to worker's personal injury action was not tolled by pending workmen's compensation claims in District of Columbia and Maryland; statute providing that worker need not elect whether to receive workmen's compensation or to recover damages against third person and that worker was required to commence action against third person within six months after receiving workman's compensation award did not provide for tolling of statute of limitations for bringing personal injury action. D.C. Code 1981, §§ 12-301, 36-335(a). *Simpson v. Jack Baker, Inc.*, 620 A.2d 254, 1993 D.C. App. LEXIS 28 (1993).

Three-year statute of limitations applicable to plaintiff's personal injury action was not tolled during ongoing settlement negotiations, where plaintiff did not allege any actions on part of defendant to induce delay; in hopes of settlement, plaintiff on his own failed to file suit prior to expiration of statute of limitations. D.C. Code 1981, § 12-301. *Simpson v. Jack Baker, Inc.*, 620 A.2d 254, 1993 D.C. App. LEXIS 28 (1993).

Doctrine of equitable tolling did not apply to toll statute of limitations upon filing of suit in federal court, where suit in federal court was dismissed for lack of subject matter jurisdiction, but en banc court should consider adopting such doctrine. D.C. Code 1981, § 12-301(3). *Curtis v. Aluminum Ass'n*, 607 A.2d 509, 1992 D.C. App. LEXIS 108 (1992), writ of certiorari dismissed by 506 U.S. 994, 113 S. Ct. 516, 121 L. Ed. 2d 527, 1992 U.S. LEXIS 7664 (1992), writ of certiorari denied by 506 U.S. 1050, 113 S. Ct. 970, 122 L. Ed. 2d 125, 1993 U.S. LEXIS 86, 61 U.S.L.W. 3478 (1993).

Discharged employee's action under Human Rights Act did not accrue until Court of Appeals dismissed without prejudice employee's petition for review; employee could not be required to anticipate development of "contested case" juris prudence and bring action in superior court seeking review of Office of Human Rights' dismissal of her administrative complaint. D.C. Code 1981, §§ 12-301, 12-301(8). *Simpson v. District of Columbia Office of Human Rights*, 597 A.2d 392, 1991 D.C. App. LEXIS 266 (1991).

Statute of limitations on personal injury lawsuit in state court was not tolled by the pendency of a suit which was filed earlier in federal court and then dismissed for lack of subject matter jurisdiction. D.C. Code 1981, § 12-301(8). *Bond v. Serano*, 566 A.2d 47, 1989 D.C. App. LEXIS 233 (1989).

Where, under written agreement for payment of a debt made between parties in New York, installments were due on April 17, May 16, June 16, and July 17, 1961, and obligee originally filed suit for payment in New York on July 17, 1961, but obligor could not be found in that jurisdiction and was finally traced to District of Columbia where suit for payment was filed on April 23, 1964, recovery in District of Columbia on first installment was barred by three-year limitation statute. D.C. Code 1961, §§ 12-201, 12-205, 12-301, 12-303. *Namerdy v. Generalcar*, 217 A.2d 109, 1966 D.C. App. LEXIS 140 (App. 1966).

Doctrine of equitable tolling did not permit consumer to stack one class action lawsuit on another, so as to allow her to file claims against compact disc (CD) producers and distributors, under Antitrust Act and Consumer Protection Procedures Act, based on conduct that occurred outside the statutes of limitations applicable to

those claims. *Marbry v. EMI Music Distribution, Inc.*, 129 WLR 2065 (Super. Ct. 2001).

Performance of condition, demand or notice.

Where a demand is necessary to perfect a cause of action, statute of limitations does not commence to run until demand is made, but a party is not at liberty to stave off operation of statute inordinately by failing to make demand; when statutorily unstipulated, time for demand is ordinarily a reasonable time. D.C. Code § 12-301(7). *Nyhus v. Travel Management Corp.*, 466 F.2d 440, 1972 U.S. App. LEXIS 7967 (C.A.D.C. 1972).

Where a call for performance is not an essential element of cause of action, running of statute of limitations does not await a demand. D.C. Code § 12-301(7). *Nyhus v. Travel Management Corp.*, 466 F.2d 440, 1972 U.S. App. LEXIS 7967 (C.A.D.C. 1972).

Where contract envisions an actual demand, statute of limitations is set in motion only by such a demand. D.C. Code § 12-301(7). *Nyhus v. Travel Management Corp.*, 466 F.2d 440, 1972 U.S. App. LEXIS 7967 (C.A.D.C. 1972).

Three-year statute of limitations applicable in contract actions [D.C. Code 1981, § 12-301] begins to run at time demand is made where uncontroverted facts show loan of money to be repaid on demand at specified time. *Dilbeck v. Murphy*, 502 A.2d 466, 1985 D.C. App. LEXIS 543 (1985).

Pleadings.

Language of complaint by discharged Department of Justice attorney unambiguously indicated that publication of allegedly defamatory charges by individual defendants within the Department occurred at the time of her discharge, and thus, complaint, on its face, showed that her Bivens claim against those individual defendants was time barred under applicable one-year statute of limitations. D.C. Code 1981, § 12-301(4). *Doe v. United States Dep't of Justice*, 753 F.2d 1092, 1985 U.S. App. LEXIS 27761 (C.A.D.C. 1985).

Retired police officers provided no factual support for their arguments that either the discovery rule or equitable tolling applied such that their claims against District of Columbia, alleging that the District failed to pay them basic and overtime compensation for fulfilling the duties of "detective sergeants," in violation of District of Columbia law and the Fair Labor Standards Act (FLSA), were not time-barred. *Abate v. District of Columbia*, 659 F.Supp.2d 156, 2009 U.S. Dist. LEXIS 92827 (2009).

Whether former client's claims against attorney for, inter alia, negligence and intent to misappropriate funds were time-barred under District of Columbia law could not be decided on motion to dismiss when pro se plaintiff did

not clearly state events giving rise to all claims asserted in complaint. *Nwachukwu v. Karl*, 223 F.Supp.2d 60, 2002 U.S. Dist. LEXIS 16384 (2002).

Former employee's pro se complaint alleged that she suffered emotional distress as result of supervisor's conduct, and, thus, employee's amended complaint adding claim for intentional infliction of emotional distress under District of Columbia law related back to original complaint for statute of limitations purposes. *Thompson v. Jasas Corp.*, 212 F.Supp.2d 21, 2002 U.S. Dist. LEXIS 13266 (2002).

In products liability action against cigarette manufacturers, plaintiffs sufficiently alleged that their fraud claims were not barred by statute of limitations under District of Columbia law; plaintiffs alleged that manufacturers had known for many years that cigarettes were addictive, caused cancer, and caused emphysema, and that manufacturers intentionally withheld that knowledge with intent to deceive public. D.C. Code 1981, § 12-301(8). *Smith v. Brown & Williamson Tobacco Corp.*, 3 F.Supp.2d 1473, 1998 U.S. Dist. LEXIS 8848 (1998).

White university administrator's complaint against university for employment discrimination sufficiently alleged continuing violation of § 1983 and § 1981, so that all alleged incidents occurred within statute of limitations, where complaint alleged that university failed from 1980 to 1987 to grant administrative permanent status in his position, that assurances of permanent placement were given to university employees in 1980 and 1981, that every comparably situated African-American employee received permanent placement, and that failure to grant permanent placement culminated in administrator's demotion in 1987, and where alleged 1987 demotion fell within statute of limitations. 42 U.S.C. §§ 1981, 1983; D.C. Code 1981, § 12-301(8). *Holland v. Board of Trustees of University of the Dist. of Columbia*, 794 F. Supp. 420, 1992 U.S. Dist. LEXIS 11199 (1992).

University's claim that associate professor's § 1981 discrimination claim was subject to District of Columbia's one-year limitations period for intentional torts, rather than three-year limitations period for general torts, was waived by university's failure to argue that limitations period for intentional torts should be used. 42 U.S.C. § 1981; D.C. Code 1981, § 12-301(4, 8). *Saunders v. George Washington University*, 768 F. Supp. 854, 1991 U.S. Dist. LEXIS 12611 (1991).

Mere allegation that conspiracy to deprive former government employee of his job continued as conspiracy of silence after employee's dismissal, which admittedly occurred outside period set by statute of limitations, or that conspiracy was actively concealed within the limitations period would not suffice to make

actionable those acts with respect to which statute of limitations had run. D.C. Code § 12-301(8). *Fitzgerald v. Seamans*, 384 F. Supp. 688, 1974 U.S. Dist. LEXIS 6366 (1974), affirmed in part by 553 F.2d 220, 180 U.S. App. D.C. 75, 1977 U.S. App. LEXIS 14625 (1977).

The issue of whether a complaint fails to state a claim because it was time-barred is to be decided by the trial court, and, in making this determination, the court can consider the complaint and any documents attached to or incorporated in the complaint. *D.C. Water & Sewer Auth. v. Delon Hampton & Assocs.*, 851 A.2d 410, 2004 D.C. App. LEXIS 268 (2004).

Fact that parties had entered into stipulation about presentation of expert testimony in arrestee's tort action arising out of alleged excessive force did not provide basis for trial court to deny motion for leave to amend answer to assert statute of limitations defense, absent showing by arrestee of prejudice resulting from failure to raise defense earlier; nothing in stipulation suggested that District waived its right to raise affirmative defense of statute of limitations. (Per Terry, J., with one Judge concurring in the result.) Civil Rules 8(c, f), 15(a). *District of Columbia v. Tinker*, 691 A.2d 57, 1997 D.C. App. LEXIS 35 (1997).

Whether delay in asserting statute of limitations defense was excusable or inexcusable is irrelevant in ruling on motion for leave to amend answer to assert statute of limitations defense; only issue is whether delay resulted in prejudice to opposing party. (Per Terry, J., with one Judge concurring in the result.) Civil Rules 8(c, f), 15(a). *District of Columbia v. Tinker*, 691 A.2d 57, 1997 D.C. App. LEXIS 35 (1997).

Arrestee was not prejudiced substantially enough to justify denial of motion to amend answer to assert limitations defense in arrestee's tort action; limitations defense was readily apparent from face of complaint, which stated that allegedly intentional assault occurred almost three years before arrestee filed suit and, thus, arrestee must have known from the start that he was proceeding, at least on assault count, in face of known procedural peril, and lateness in bringing matter up did not affect that fact. (Per Terry, J., with one Judge concurring in the result.) Civil Rules 8(c, f), 15(a). *District of Columbia v. Tinker*, 691 A.2d 57, 1997 D.C. App. LEXIS 35 (1997).

Arrestee would not have suffered substantial prejudice if government had been allowed to amend its answer to assert limitations defense to intentional tort claim, even though arrestee subsequently dismissed claims for negligent hiring, training, and supervision; arrestee did not withdraw negligence claims until several months after trial court denied motion to amend, and even longer after stipulation about expert testimony on excessive force claim. (Per Terry, J., with one Judge concurring in the

result.) Civil Rules 8(c, f), 15(a). *District of Columbia v. Tinker*, 691 A.2d 57, 1997 D.C. App. LEXIS 35 (1997).

Rule that statute of limitations defense may be deemed waived if not pleaded promptly by defendant in responsive pleading must be read in light of rules mandating that pleadings be construed so as to do "substantial justice," providing that parties may amend their pleadings with leave of court after responsive pleading is filed. (Per Terry, J., with one Judge concurring in the result.) Civil Rules 8(c, f), 15(a). *District of Columbia v. Tinker*, 691 A.2d 57, 1997 D.C. App. LEXIS 35 (1997).

Upholding sufficiency of complaint under discovery rule for purposes of motion to dismiss would not deprive defendant of opportunity to contest timeliness of suit, which alleged repressed memories of childhood sexual abuse, at later stages of litigation, but rather finding by trier of fact adverse to plaintiffs on limitations issue, regarding what each plaintiff knew and when she knew or should have known it, would render suit untimely and would thus obviate occasion for decision on merits. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

For purposes of tort claim arising out of childhood sexual abuse, evidence of truth or falsity of claims of repressed memory may, or may not, come from variety of sources, and potential existence and quality of such corroboration cannot be determined from face of complaint, nor can judge know in advance whether evidence which, as yet, has not been produced, will necessarily prove unreliable. D.C. Code 1981, § 12-301. *Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

Presumptions and burden of proof.

Defendant seeking to assert statute of limitations as a defense to fraud claim bears burden, under District of Columbia law, of showing that plaintiff has not met due diligence standard for accrual of claim. D.C. Code 1981, § 12-301(8). *Hawkins v. Greenfield*, 797 F. Supp. 30, 1992 U.S. Dist. LEXIS 12484 (1992).

In the absence of an analogous statute of limitations, the party asserting laches has the burden of establishing that the defendant has been prejudiced by delay and that delay was unreasonable. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

If one claim is barred by the statute of limitations, other claims intertwined with that claim are also barred. *Mullin v. Wash. Free Weekly Inc.*, 785 A.2d 296, 2001 D.C. App. LEXIS 233 (2001).

Defendant who pleaded statute of limitations as bar to action failed in meeting his burden of proof. D.C. Code 1961, § 12-301(7, 8). *Dawson*

v. Drazin, 223 A.2d 375, 1966 D.C. App. LEXIS 238 (App. 1966).

Plaintiff pressing claim which on its face is barred by limitations has burden of proving acknowledgment or new promise in form of part payment. *Dulberger v. Lippe*, 202 A.2d 777, 1964 D.C. App. LEXIS 263 (App. 1964).

Party pleading statute of limitations as affirmative defense has burden of proof unless claim is barred on its face. *Pekofsky v. Blalock*, 175 A.2d 604, 1961 D.C. App. LEXIS 287 (Cr.App. 1961).

Where defendant contended in his counterclaim that his cause of action against plaintiff's decedent had been fraudulently concealed by the latter and that defendant's counterclaim for legal services was therefore not barred by limitation, burden was upon defendant to prove the fraud. *Da Costa v. Hardy*, 118 A.2d 805, 1955 D.C. App. LEXIS 235 (Cr.App. 1955).

A plaintiff who was pressing a claim which on its face is barred by limitations, and who claims an acknowledgment or new promise in the form of a part payment has the burden of proving such fact, and a part of that burden is to establish date of payment or new promise. *D.C. Code 1951, § 12-201. Stern Equipment Co. v. Pogue*, 117 A.2d 447, 1955 D.C. App. LEXIS 214 (Cr.App. 1955).

Though if conditional sales contract was under seal it was subject to twelve-year period of limitations, a three-year limitation was applicable where seller failed to prove that buyer signed contract. *D.C. Code 1951, § 12-201. Stern Equipment Co. v. Pogue*, 117 A.2d 447, 1955 D.C. App. LEXIS 214 (Cr.App. 1955).

Where claim for services rendered appeared on its face to be barred by limitations, the burden of proving part payments on account tolling the statute of limitations was upon plaintiff. *Tendler v. L. E. Massey, Inc.*, 33 A.2d 626, 1943 D.C. App. LEXIS 178 (Cr.App. 1943).

Purpose.

Broad purposes of statutes of limitation are prevention of stale claims and unfair surprise. *D.C. Code § 12-301(7, 8). Macklin v. Spector Freight Systems, Inc.*, 478 F.2d 979, 1973 U.S. App. LEXIS 10026 (C.A.D.C. 1973).

The purpose of both the Virginia and the District of Columbia statutes of limitations is to protect domiciliaries from the prosecution of stale claims. *Code Va.1950, § 8-24; D.C. Code § 12-301. Farrier v. May Dep't Stores Co.*, 357 F. Supp. 190, 1973 U.S. Dist. LEXIS 13957 (1973).

An underlying aim of the District of Columbia Council in enacting statute that makes time limitations inapplicable to actions brought by the District of Columbia government was to ensure that the District received, at the least, the benefit of the common law principle of *nullum tempus occurrit regi* that no time runs

against the sovereign. *D.C. Water & Sewer Auth. v. Delon Hampton & Assocs.*, 851 A.2d 410, 2004 D.C. App. LEXIS 268 (2004).

Statutes of limitation are responsive not only to evidentiary concerns, but also to considerations of "repose," or potential defendant's interest in security against stale claims and in planning for future without uncertainty inherent in potential liability. *D.C. Code 1981, § 12-301. Farris v. Compton*, 652 A.2d 49, 1994 D.C. App. LEXIS 249 (1994).

The legislative history demonstrates that the intent behind enactment was to expand the period of time in which plaintiffs could sue to recover for asbestos-related injury or illness. And both that legislative history and the plain meaning of § 12-311(b) demonstrate just as clearly that § 12-311(a) was directed only at employees who are disabled from work because of exposure to asbestos, and not to the broader, general population of potential victims of such illness or injury. Defendants' reading which would give nonemployee victims of an asbestos illness or injury less time within which to sue than they previously had under this section would contravene the intent of the legislature and the plain meaning of § 12-311(b), and must be rejected. *Gwyer v. Celotex Corp.*, 117 WLR 2617 (Super. Ct. 1989).

The history and purposes of the District of Columbia Statute of Limitations Amendment Act of 1986 indicate that the council intended to preclude a statute of limitations defense in cases where the District of Columbia has a pecuniary interest in the litigation and is asserting a public interest, and it appears that the council did not intend to prohibit a statute of limitations defense where the District of Columbia has only a nominal or technical interest in the litigation. *D.C. v. P.L.*, 118 WLR 1729 (Super. Ct. 1990).

Questions for jury.

Discovery rule, a legal doctrine which governs when limitations period begins to run in certain situations, is presumably for a jury to consider when issues of disputed fact surround the rule's application, but equitable tolling and estoppel, which ask whether equity requires extending a limitations period, are for the judge to apply, using her discretion, regardless of the presence of a factual dispute. *Smith-Haynie v. District of Columbia*, 155 F.3d 575, 1998 U.S. App. LEXIS 23295 (C.A.D.C. 1998).

Under District of Columbia law, whether alleged victim of undue influence continued to be subject to undue influence so as to toll statute of limitations is factual question which must be determined from all surrounding facts and circumstances. *Goldman v. Bequai*, 19 F.3d 666, 1994 U.S. App. LEXIS 6005 (C.A.D.C. 1994).

Whether meditation organization could be estopped from asserting statute of limitations defense in fraud action brought against it by former meditation teacher if they lulled meditation teacher into inaction, or whether teacher discovered, or should have discovered, fraud, were questions for jury. *Kropinski v. World Plan Executive Council-US*, 853 F.2d 948, 1988 U.S. App. LEXIS 10700 (C.A.D.C. 1988).

Evidence on issue whether clients were estopped by their informal assurances to attorney from asserting limitations as defense in attorney's action to recover fee was insufficient for jury. D.C. Code §§ 12-301(7), 28-3504; Fed.Rules Civ.Proc. rule 50, 18 U.S.C. Brown v. Lamb, 414 F.2d 1210, 1969 U.S. App. LEXIS 11460 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 907, 90 S. Ct. 904, 25 L. Ed. 2d 88, 1970 U.S. LEXIS 2977 (1970).

Issue of when student discovered or should have discovered that her general education development (GED) certificate was invalid involved fact question that could not be resolved on motion to dismiss student's fraud claims against school operator on limitations grounds. *Haralson v. Management & Training Corp.*, 724 F.Supp.2d 82, 2010 U.S. Dist. LEXIS 72661 (2010).

Under District of Columbia law, unless the determination of when a cause of action accrued for fraud or negligent misrepresentation is so clear that the court can rule on the issue as a matter of law, the jury should decide the issue on appropriate instructions. *C&E Servs. v. Ashland, Inc.*, 498 F.Supp.2d 242, 2007 U.S. Dist. LEXIS 55909 (2007).

Although what constitutes the accrual of a cause of action for fraud or negligent misrepresentation is a question of District of Columbia law, when accrual actually occurred in a particular case is a question of fact. *C&E Servs. v. Ashland, Inc.*, 498 F.Supp.2d 242, 2007 U.S. Dist. LEXIS 55909 (2007).

Under District of Columbia law, whether plaintiff has either actual or inquiry notice of his or her claim, for statute of limitations purposes, is question of fact. *Gassmann v. Eli Lilly & Co.*, 407 F.Supp.2d 203, 2005 U.S. Dist. LEXIS 38112 (2005).

Date on which parking garage patron who was struck by unattended vehicle knew or should have known of wrongdoing of vehicle manufacturer, for purposes of statute of limitations' discovery rule was a question of fact to be decided by jury. *Lee v. Wolfson*, 265 F.Supp.2d 14, 2003 U.S. Dist. LEXIS 4013 (2003).

Under District of Columbia law, what constitutes the accrual of a cause of action is a question of law; when the cause of action actually accrued in a particular case is a question of fact. *Smith v. Brown & Williamson Tobacco Corp.*, 108 F.Supp.2d 12, 2000 U.S. Dist. LEXIS 11574 (2000).

Under District of Columbia law, although what constitutes the accrual of a cause of action is a question of law, the specific moment when accrual occurs is usually a jury question. *Smith v. Brown & Williamson Tobacco Corp.*, 3 F.Supp.2d 1473, 1998 U.S. Dist. LEXIS 8848 (1998).

When alleged fraud was or should have been discovered, triggering three-year statute of limitations under District of Columbia law, depends on facts of particular situation and is issue for jury to resolve. *Hawkins v. Greenfield*, 797 F. Supp. 30, 1992 U.S. Dist. LEXIS 12484 (1992).

Whether plaintiff exercised reasonable diligence, for purposes of discovery rule under District of Columbia law, is a highly fact-bound issue, and requires an evaluation of all of plaintiff's circumstances; relevant circumstances include, but are not limited to, the conduct and misrepresentations of defendant and the reasonableness of plaintiff's reliance on defendant's conduct and misrepresentations. *Plan Comm. v. PricewaterhouseCoopers, LLP*, 335 B.R. 234, 2005 U.S. Dist. LEXIS 18889 (2005), dismissed by 2007 U.S. Dist. LEXIS 29240 (D.D.C. Apr. 20, 2007).

What constitutes the accrual of a cause of action is question of law under District of Columbia law; the actual date of accrual, however, is question of fact. *Plan Comm. v. PricewaterhouseCoopers, LLP*, 335 B.R. 234, 2005 U.S. Dist. LEXIS 18889 (2005), dismissed by 2007 U.S. Dist. LEXIS 29240 (D.D.C. Apr. 20, 2007).

What constitutes the accrual of a cause of action, for limitations purposes, is a question of law. *Doe v. Medlantic Health Care Group, Inc.*, 814 A.2d 939, 2003 D.C. App. LEXIS 2 (2003).

When accrual of the cause of action actually occurred in a particular case, for limitations purposes, is a question of fact for the fact finder. *Doe v. Medlantic Health Care Group, Inc.*, 814 A.2d 939, 2003 D.C. App. LEXIS 2 (2003).

Whether the relationship of the defendants is sufficiently close, so that plaintiff's inquiry notice of wrongdoing on the part of one defendant causes the accrual, for limitations purposes, of his action against another, unknown defendant responsible for the same harm is a question of fact. *Doe v. Medlantic Health Care Group, Inc.*, 814 A.2d 939, 2003 D.C. App. LEXIS 2 (2003).

What constitutes the accrual of a cause of action for purposes of a statute of limitations is a question of law; the actual date of accrual, however, is a question of fact. *Executive Sandwich Shoppe, Inc. v. Carr Realty Corp.*, 749 A.2d 724, 2000 D.C. App. LEXIS 89 (2000).

What constitutes accrual of cause of action, for statute of limitations purposes, is question of law; however, actual date of accrual is question of fact. *Cevenini v. Archbishop of Washing-*

ton, 707 A.2d 768, 1998 D.C. App. LEXIS 27 (1998).

What constitutes accrual of cause of action for limitation purposes is question of law, but when accrual actually occurred in a particular case is question of fact. *Fred Ezra Co. v. Psychiatric Inst.*, 687 A.2d 587, 1996 D.C. App. LEXIS 284 (1996).

What constitutes accrual of cause of action is question of law; however, when accrual actually occurred in particular case is question of fact. *Diamond v. Davis*, 680 A.2d 364, 1996 D.C. App. LEXIS 310 (1996).

Expiration of statute of limitations is question of law, but determination of such question requires resolution of certain facts. *Dilbeck v. Murphy*, 502 A.2d 466, 1985 D.C. App. LEXIS 543 (1985).

Review.

When the relationship between the fact of injury and the alleged tortious conduct is obscure when the injury occurs, Court of Appeals applies a discovery rule to determine when the statute of limitations commences. *Brown v. NAS*, 844 A.2d 1113, 2004 D.C. App. LEXIS 71 (2004).

Dismissal with prejudice of pedestrian's personal injury complaint against the District of Columbia was not reversible error, where statute of limitations period governing claim expired three days after complaint was filed with mayor. *Dorsey v. District of Columbia*, 827 A.2d 32, 2003 D.C. App. LEXIS 420 (2003), amended by 839 A.2d 667, 2003 D.C. App. LEXIS 753 (D.C. 2003).

On appeal, a trial court's ruling on laches presents a mixed question of fact and law that calls for a mixed standard of review; answers to the factual questions bearing on prejudice to the defendant from delay and on plaintiffs' earlier awareness of the claim are for the trial court, whose findings will be accepted unless clearly erroneous, but the question of whether the facts, taken together, are sufficient to sustain the defense is one of law which the appellate court will review without need for deference to the trial court's judgment. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

To doubt the validity of a laches defense, the Court of Appeals looks to the entire course of events. *Sisson v. D.C. Bd. of Zoning Adjustment*, 805 A.2d 964, 2002 D.C. App. LEXIS 504 (2002).

Homeowners' argument that fraudulent concealment tolled running of statute of limitations on their actions against unlicensed home improvement contractor to recover advance payments was not preserved for appeal where homeowners did not allege that they were affirmatively misled or cite facts which would have allowed trial court to infer that fraud

might have occurred. D.C. Code 1981, §§ 2-501, 2-502, 12-301(8); Civil Rules 9(b), 12-I(k), 56(e). *Woodruff v. McConkey*, 524 A.2d 722, 1987 D.C. App. LEXIS 333 (1987).

Statute of limitations defense, once waived either expressly or by nonassertion, may not be raised by collateral attack upon adverse judgment or on appeal. *Mayo v. Mayo*, 508 A.2d 114, 1986 D.C. App. LEXIS 320 (1986).

Where appeal by plaintiff purchaser of automobile, in action for breach of contract against automobile dealer and manufacturer, in which action judgment had been entered for defendants on grounds that action was commenced more than six years after purchase of the automobile and thus was barred by the statute of limitations, was completely lacking in substance, appeal would be dismissed as frivolous and double costs would be assessed against purchaser. D.C. Code §§ 12-301(6), 28:2-725; D.C. Code Court of Appeals Rules, rule 38. *Tolson v. Handley Ford, Inc.*, 304 A.2d 634, 1973 D.C. App. LEXIS 286 (1973).

Summary judgment.

In legal malpractice action, there was genuine issue of material fact as to when former client discovered or should have discovered her former attorney's alleged malpractice and whether her action was brought within District of Columbia three-year statute of limitations for legal malpractice actions, precluding summary judgment. D.C. Code 1982, § 12-301. *Byers v. Burleson*, 713 F.2d 856, 1983 U.S. App. LEXIS 25170 (C.A.D.C. 1983).

Fact questions existed as to whether union local was adversely dominated by individual employees who engaged in scheme to embezzle union's funds, as to whether employees engaged in fraudulent concealment of scheme, and as to date when union officials discovered or should have discovered scheme, precluding summary judgment on statute of limitations grounds in union's negligence and aiding and abetting action against bank at which local had maintained checking account that employees had used to effect scheme. *AFT v. Bullock*, 539 F.Supp.2d 161, 2008 U.S. Dist. LEXIS 20019 (2008), vacated by 605 F. Supp. 2d 251, 2009 U.S. Dist. LEXIS 45791, 68 U.C.C. Rep. Serv. 2d (CBC) 424 (D.D.C. 2009).

Genuine issue of material fact as to when contractor had actual or inquiry notice of subcontractor's alleged misrepresentations about defectively priced products supplied to contractor for resale to government customers precluded summary judgment on issue of accrual of contractor's claim that subcontractor breached implied covenant of good faith and fair dealing. *C&E Servs. v. Ashland, Inc.*, 498 F.Supp.2d 242, 2007 U.S. Dist. LEXIS 55909 (2007).

Genuine issues of material fact as to when contractor providing water treatment products to government customers had actual or imputed knowledge that products supplied by subcontractor for contractor's resale were defectively priced precluded summary judgment on issue of accrual of contractor's fraud and negligent misrepresentation claims against subcontractor. *C&E Servs. v. Ashland, Inc.*, 498 F.Supp.2d 242, 2007 U.S. Dist. LEXIS 55909 (2007).

Issue of fact existed as to whether mother of woman exposed to diethylstilbestrol (DES) in utero had taken DES manufactured by particular pharmaceutical company, rather than by any of several other companies that had manufactured drug, precluding summary judgment in woman's products liability action against company; woman proffered testimony by current owner of pharmacy where mother had purchased drug that, at time of those purchases, only defendant company's DES had been stocked at pharmacy. *Gassmann v. Eli Lilly & Co.*, 407 F.Supp.2d 203, 2005 U.S. Dist. LEXIS 38112 (2005).

Genuine issues of material fact regarding when daughter, whose mother had ingested prescription drug diethylstilbestrol (DES) during pregnancy, objectively linked her infertility problems to her in utero exposure to DES precluded summary judgment, on statute of limitations grounds, on her products liability claim against pharmaceutical company. *Reeves v. Eli Lilly & Co.*, 368 F.Supp.2d 11, 2005 U.S. Dist. LEXIS 3957 (2005).

Fact question as to when bank's counterclaims against directors accrued precluded summary judgment based on statute of limitations. D.C. Code 1981, § 12-301. *First Am. Corp. v. Al-Nahyan*, 17 F.Supp.2d 10, 1998 U.S. Dist. LEXIS 12691 (1998).

Material issue of fact as to when former vocational student should have discovered extent of problems at school, and thus, had reason to know of accrediting agency's alleged fraud in extending accreditation without knowledge of whether school met accreditation standards precluded summary judgment on issue of when District of Columbia's three-year limitations period began to run. D.C. Code 1981, § 12-301(8). *Armstrong v. Accrediting Council for Continuing Educ. & Training*, 961 F. Supp. 305, 1997 U.S. Dist. LEXIS 5178 (1997), dismissed by 980 F. Supp. 53, 1997 U.S. Dist. LEXIS 15786 (D.D.C. 1997).

Under District of Columbia law, whether former property owner knew or should have known of attorney's alleged fraud, in misrepresenting contents of contract for sale of property and deed to owner, was fact question precluding summary judgment in fraud claim where events underlying claim occurred more than 25 years before suit was commenced and conflict-

ing testimony was submitted concerning property owner's advanced age, illiteracy, and reliance on attorney. D.C. Code 1981, § 12-301(8). *Hawkins v. Greenfield*, 797 F. Supp. 30, 1992 U.S. Dist. LEXIS 12484 (1992).

Triable issues of fact existed as to when and how magazine article allegedly defaming father was used by group sympathetic to mother, and what form alleged permission of magazine publisher took, precluding summary judgment against father on limitations grounds; article was allegedly republished so as to commence running of new limitations period. D.C. Code 1981, § 12-301. *Foretich v. Glamour*, 741 F. Supp. 247, 1990 U.S. Dist. LEXIS 3544 (1990).

Where publisher of magazine which was defendant in defamation action submitted evidence on motion for summary judgment that November issue of magazine which contained allegedly defamatory material was on sale by October 12, at latest, and plaintiff did not file action until October 16 of following year, plaintiff's mere assertions that local retail outlets stated that February issue of magazine was on sale January 16 or 17 were insufficient to preclude summary judgment based on District of Columbia's one-year statute of limitations for libel actions. D.C. Code 1981, § 12-301. *Foretich v. Glamour*, 741 F. Supp. 247, 1990 U.S. Dist. LEXIS 3544 (1990).

Whether reasonable person, in position of former teacher of transcendental meditation, would have discovered alleged fraud was genuine issue of material fact, precluding summary judgment on whether District of Columbia's three-year statute of limitations barred fraud action by former teacher against organization. D.C. Code 1981, §§ 12-301(8), 12-302(a)(2). *Doe v. Yogi*, 652 F. Supp. 203, 1986 U.S. Dist. LEXIS 16713 (1986), affirmed in part and reversed in part by, remanded sub nomine *Kropinski v. World Plan Executive Council-US*, 853 F.2d 948, 272 U.S. App. D.C. 17, 1988 U.S. App. LEXIS 10700, 13 Fed. R. Serv. 3d (Callaghan) 335, 26 Fed. R. Evid. Serv. (CBC) 792 (1988).

When plaintiff took his last course in transcendental meditation was genuine issue of material fact, precluding summary judgment on whether District of Columbia three-year statute of limitations barred action against organization for fraud, negligence and intentional infliction of emotional distress. D.C. Code 1981, §§ 12-301(8), 12-302(a)(2). *Doe v. Yogi*, 652 F. Supp. 203, 1986 U.S. Dist. LEXIS 16713 (1986), affirmed in part and reversed in part by, remanded sub nomine *Kropinski v. World Plan Executive Council-US*, 853 F.2d 948, 272 U.S. App. D.C. 17, 1988 U.S. App. LEXIS 10700, 13 Fed. R. Serv. 3d (Callaghan) 335, 26 Fed. R. Evid. Serv. (CBC) 792 (1988).

Since plaintiffs failed to make any argument contrary to defendant's assertion that plaintiffs' claim of conversion was time barred and

that plaintiffs could not rely on the fraudulent concealment doctrine to toll the statute of limitations, defendant's motion for summary judgment on conversion count would be treated as conceded; furthermore, plaintiff knew or should have known of theft of file since 1969, when magazine article mentioned the theft, so that three-year limitations period had run. U.S. Dist. Ct. Rules D.D.C. Rule 1-9(d); D.C. Code 1981, § 12-301(2). *Liberty Lobby, Inc. v. Anderson*, 562 F. Supp. 201, 1983 U.S. Dist. LEXIS 18113 (1983), affirmed in part and reversed in part by 746 F.2d 1563, 241 U.S. App. D.C. 246, 1984 U.S. App. LEXIS 17096, 11 Media L. Rep. (BNA) 1001 (1984).

For limitations of actions purposes, issue of due diligence in discovering that a defect in a product has caused injury is one which must be left to the trier of fact in all but the most exceptional cases; nonetheless, where the evidence is such that the court could only permit the issue to be resolved by a jury in one way, summary judgment may be appropriate. D.C. Code § 12-301(8). *Grigsby v. Sterling Drug, Inc.*, 428 F. Supp. 242, 1975 U.S. Dist. LEXIS 11278 (1975), affirmed without opinion by 543 F.2d 417, 177 U.S. App. D.C. 270 (1976).

Genuine issue of material fact existed as to whether, in the exercise of reasonable diligence, client should have known or suspected that attorney's conduct in disbursing the proceeds of a settlement of a survival action that did not conform to the intestacy statute was wrongful, as to put client on inquiry notice and begin the running of the statute of limitations, precluding summary judgment in legal malpractice action. D.C. Code 1981, §§ 12-301(8), 19-303. *Ray v. Queen*, 747 A.2d 1137, 2000 D.C. App. LEXIS 60 (2000).

Fact question as to whether patient, who was allegedly sexually assaulted by chiropractor, was rendered non compos mentis when a substantial portion of her right of action accrued, so as to toll statute of limitations, precluded summary judgment for chiropractor on sexual assault claim. D.C. Code 1981, § 12-301(4). *McCracken v. Walls-Kaufman*, 717 A.2d 346, 1998 D.C. App. LEXIS 170 (1998).

Expert testimony regarding patient's mental state following alleged sexual assault by chiropractor was not necessary to withstand chiropractor's motion for summary judgment on sexual assault claim on statute of limitations grounds. D.C. Code 1981, § 12-301(4). *McCracken v. Walls-Kaufman*, 717 A.2d 346, 1998 D.C. App. LEXIS 170 (1998).

Genuine issue of fact as to when attorney's representation of client terminated, with regard to client's application to Federal Communications Commission (FCC) to build new radio station, precluded summary judgment for attorney and his law firm on statute of limitations grounds in client's legal malpractice ac-

tion arising out of that representation. D.C. Code 1981, § 12-301. *R.D.H. Communs. v. Winston*, 700 A.2d 766, 1997 D.C. App. LEXIS 222 (1997).

Fact issue existed as to whether attorney concealed pretrial order which would allegedly provide basis for clients' malpractice action, precluding summary judgment for attorney on statute of limitations defense. D.C. Code 1981, § 12-301(8). *Norfleet v. Rosen*, 539 A.2d 1089, 1988 D.C. App. LEXIS 26 (1988).

Whether homeowner's advance payments to unlicensed home improvement contractor were made more than three years before she filed suit was genuine issue of material fact, precluding summary judgment in favor of contractor on limitations grounds. D.C. Code 1981, §§ 2-501, 2-502, 12-301(8). *Woodruff v. McConkey*, 524 A.2d 722, 1987 D.C. App. LEXIS 333 (1987).

In action in which homeowner sought compensation for various defects which arose in connection with addition of new room to house, factual dispute existed as to when owner became aware of faulty plumbing, defectively installed window panes, and installation of heater in such manner that it caused dangerous buildup of heat under bench, precluding summary judgment based on statute of limitations. D.C. Code 1981, § 12-301(3, 7). *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1984 D.C. App. LEXIS 554 (1984).

In suit for medical malpractice arising out of face-lift surgery, genuine issue of material fact as to whether, through exercise of due diligence, patient discovered or should have discovered her injury more than three years before filing of her action, precluded summary judgment on ground that statute of limitations had run before action was instituted. D.C. Code SCR, Civil Rule 12(b); D.C. Code § 12-301(8). *Burns v. Bell*, 409 A.2d 614, 1979 D.C. App. LEXIS 488 (1979).

In beneficiary's action against insurer to recover double indemnity accidental death benefits under group life policy, beneficiary's allegations that suit was timely brought, that claim was in continuing dispute, and that insurer's rejection of claim was a nullity failed to establish existence of genuine issues of material fact with respect to insurer's defenses under statute of limitations and did not preclude grant of summary judgment, absent supporting factual assertions. D.C. Code SCR, Civil Rules 12-1(k), 56(e); D.C. Code § 12-301(7). *Dillard v. Travelers Ins. Co.*, 298 A.2d 222, 1972 D.C. App. LEXIS 305 (1972).

Tolling.

Dismissal with prejudice of juvenile plaintiffs' common law claims, under District of Columbia law, arising from police officers' alleged use of batons against the plaintiffs, was

not warranted; although plaintiffs erroneously conceded that the juveniles' claims were time-barred, the limitations period for those claims was tolled until juveniles reached age of majority, so that dismissal without prejudice was appropriate. *Rudder v. Williams*, 666 F.3d 790, 2012 U.S. App. LEXIS 910 (C.A.D.C. 2012).

Allegations that descendants of Jewish Hungarian collector of art promptly commenced negotiations with Hungarian government following collapse of Communist rule for return of art collection, that negotiations continued until family member filed suit in Hungary, that Hungary actively misled descendants for years into believing that it accepted their ownership rights to artwork collection, and repeatedly advised them it would reach favorable decision, at which time they could decide if further action would be required, were sufficient to state that District of Columbia's three-year limitations period for descendant's bailment claims was subject to equitable tolling. *de Csepel v. Republic of Hungary*, 808 F.Supp.2d 113, 2011 U.S. Dist. LEXIS 98573 (2011), amended in part by 2011 U.S. Dist. LEXIS 150696 (D.D.C. Nov. 30, 2011), affirmed in part and reversed in part by 2013 U.S. App. LEXIS 7837 (D.C. Cir. Apr. 19, 2013).

Under District of Columbia law, medical school student's claim against medical school for breach of contract based on student's dismissal from the school accrued, for limitations purposes, on the date of the dismissal. *Hajjar-Nejad v. George Wash. Univ.*, 802 F.Supp.2d 166, 2011 U.S. Dist. LEXIS 90213 (2011).

District of Columbia employee's disparate treatment claims under Rehabilitation Act accrued, and applicable three-year statute of limitations began to run, when employee received notice by employer's Equal Employment Opportunity (EEO) manager that employer had denied his request to work from home. *Adams v. District of Columbia*, 740 F.Supp.2d 173, 2010 U.S. Dist. LEXIS 102226 (2010).

Police department's alleged acts to conceal identity of police officer did not toll, under lulling doctrine, District of Columbia's one year statute of limitations for arrestee's claims of assault, battery, false arrest, defamation and intentional infliction of emotional distress, absent any affirmative inducement by department to prevent filing of action. *Hall v. Lanier*, 708 F.Supp.2d 28, 2010 U.S. Dist. LEXIS 39788 (2010).

Personal representative of shooting victim was barred, under District of Columbia law, from asserting equitable tolling of one-year statute of limitations for his wrongful death claim and three-year statute of limitations for other torts in his capacity as personal representative, in action against gun manufacturer, where assertion of equitable tolling was based on allegedly timely filing of claims that were

later dismissed without prejudice. *Melara v. China North Industries, Corp.*, 658 F.Supp.2d 178, 2009 U.S. Dist. LEXIS 90137 (2009).

Former District of Columbia Metropolitan Police Department (MPD) employee's exhaustion of administrative remedies in connection with her defamation claims against District and mayor equitably tolled one-year statute of limitations for defamation claims until date when administrative decisions became final. *Owens v. District of Columbia*, 631 F.Supp.2d 48, 2009 U.S. Dist. LEXIS 58013 (2009).

District of Columbia limitations statute governing Bivens claims brought by detainee against federal officials, stemming from alleged five-month jail overdetention, would not be tolled by detainee's imprisonment for due process claims related to issuance of Notice of Escape following refusal of readmission to halfway house, since purported injury occurred prior to detainee's imprisonment. *Wormley v. United States*, 601 F.Supp.2d 27, 2009 U.S. Dist. LEXIS 14118 (2009).

District of Columbia limitations statute governing Bivens claims brought by detainee against federal officials, stemming from alleged five-month jail overdetention, would be tolled during detainee's imprisonment following issuance of detainer, to extent that alleged injuries occurred during imprisonment. *Wormley v. United States*, 601 F.Supp.2d 27, 2009 U.S. Dist. LEXIS 14118 (2009).

Three-year statutes of limitations applicable to claims under District of Columbia law for recovery of personal property, infliction of emotional distress, and breach of contract brought by participant in airline's frequent flyer program against airline and others were tolled during time that participant's request to proceed in forma pauperis and his motion for reconsideration of order denying that request were pending. *Ficken v. AMR Corp.*, 578 F.Supp.2d 134, 2008 U.S. Dist. LEXIS 75434 (2008).

Under District of Columbia law, statutory period for plaintiff to file libel action was not equitably tolled after he mistakenly filed action in federal court in New Jersey, even if defendant had notice of claim in New Jersey action, and New Jersey court could have transferred action to District of Columbia, where plaintiff never requested transfer, and New Jersey action was dismissed for lack of personal jurisdiction. *Jovanovic v. US-Algeria Bus. Council*, 561 F.Supp.2d 103, 2008 U.S. Dist. LEXIS 48412 (2008), affirmed by 2009 U.S. App. LEXIS 8668 (D.C. Cir. Apr. 22, 2009).

Equitable tolling was warranted of three-year limitations period applicable to participant's ERISA benefits claim during internal appeal of benefits denial where participant diligently pursued her rights after being informed that her benefits were terminated and require-

ment that she exhaust her administrative remedies before filing suit and administrator's delay in processing internal appeal were extraordinary circumstances, which rendered strict application of statute of limitations inequitable. *Pettaway v. Teachers Ins. & Annuity Ass'n of Am.*, 547 F.Supp.2d 1, 2008 U.S. Dist. LEXIS 31584 (2008).

Client's affirmed statement that he was physically injured while on night patrol during his service in the Vietnam War was insufficient to establish that he was mentally unsound, as would have tolled statute of limitations under District of Columbia law on client's legal malpractice claim. *Gallucci v. Schaffer*, 507 F.Supp.2d 85, 2007 U.S. Dist. LEXIS 63050 (2007), affirmed by 2008 U.S. App. LEXIS 3235 (D.C. Cir. Feb. 11, 2008).

Under District of Columbia law, three-year statute of limitations for client's malpractice action against law firm and attorneys, which arose from alleged failure to advise client that his workers' compensation had been calculated incorrectly, was not tolled, pursuant to doctrine of fraudulent concealment, by telephone conversation client allegedly had with unidentified individual at firm, during which that individual told client that there was nothing more firm could do for him, since client was already on notice of the alleged malpractice prior to the date of the alleged conversation. *Gallucci v. Schaffer*, 507 F.Supp.2d 85, 2007 U.S. Dist. LEXIS 63050 (2007), affirmed by 2008 U.S. App. LEXIS 3235 (D.C. Cir. Feb. 11, 2008).

Widow could not have reasonably relied on alleged misrepresentations made by deceased husband's attorney in deposition regarding husband's company's purchase of property so as to toll statute of limitations on widow's claims of fraud and negligent misrepresentation stemming from transfer of property to company that was a beneficiary of husband's trusts; although attorney incorrectly stated during his deposition that company's attorney worked on pre-death and not post-death matters for husband, the statement, even assuming that it was intentionally false, did not toll the statute of limitations since husband's attorney had no continuing fiduciary duty to widow because he had previously relinquished his appointment as co-personal representative of deceased husband's estate, and widow was already on inquiry notice of company's attorney's involvement in the foreclosure sale of the property because his name appeared on the confirmatory substitute trustee's deed as the person to whom the deed should be returned after it was recorded. *Drake v. McNair*, 993 A.2d 607, 2010 D.C. App. LEXIS 215 (2010).

Dismissal without prejudice, based on insufficiency of service of process, of arrestee's complaint against District of Columbia, alleging intentional torts relating to the arrest, wiped

out the tolling effect of the filing of the complaint, and thus, the statute of limitations was deemed to have continued running from whenever the causes of action for intentional torts accrued. *Stewart-Veal v. District of Columbia*, 896 A.2d 232, 2006 D.C. App. LEXIS 154 (2006).

Once a suit is dismissed, even if without prejudice, the tolling effect of the filing of the suit is wiped out and the statute of limitations is deemed to have continued running from whenever the cause of action accrued, without interruption by that filing. *Stewart-Veal v. District of Columbia*, 896 A.2d 232, 2006 D.C. App. LEXIS 154 (2006).

Trust relationship.

Even if defendant, to whom two promissory notes had been delivered for collection, had been trustee of funds collected, where plaintiff's demand for the proceeds collected had been denied in May, 1947, the trust was thereby terminated and plaintiff's suit in February, 1952, was subject to and barred by three-year statute of limitations. D.C. Code 1951, § 12-201. *Calvin v. Rafferty*, 214 F.2d 230, 1954 U.S. App. LEXIS 2681 (C.A.D.C. 1954).

Causes of action of administrator for health benefit plan of labor organization representing federal employees alleging a conspiracy to wrongfully disallow administrator reimbursement for funds he had expended to implement the plan both before and after execution of his contract with labor organization were time barred under applicable District of Columbia statute of limitations as to those acts which arose prior to three years prior to filing of complaint where administrator failed to establish fraudulent concealment on part of defendants. D.C. Code 1981, § 12-301(8). *Burda v. National Asso. of Postal Supervisors*, 592 F. Supp. 273, 1984 U.S. Dist. LEXIS 15661 (1984), affirmed without opinion by 771 F.2d 1555, 248 U.S. App. D.C. 415 (1985).

Action to redress breach of trust sounds in equity, and statute of limitations is inapplicable to such a suit in District of Columbia. D.C. Code § 12-301(8). *Blankenship v. Boyle*, 329 F. Supp. 1089, 1971 U.S. Dist. LEXIS 13548 (1971).

Statute of limitations could not bar claim that constructive trust should be imposed upon testator's business property because constructive trust is equitable remedy and not subject to statute. *Interdonato v. Interdonato*, 521 A.2d 1124, 1987 D.C. App. LEXIS 292 (1987).

United States government or official as party.

Under District of Columbia law, one-year statute of limitations for libel and slander claims applied to former federal government employee's claim against United States for

false light invasion of privacy, for purposes of determining timeliness of former employee's presentation of such claim to responsible government agencies under Federal Tort Claims Act (FTCA) pursuant to transitional provisions of Federal Employees Liability and Reform Tort Compensation Act of 1988; sine qua non of false light claim is giving publicity to matter which places plaintiff before public in false light, and libel and slander also involve publication of false statements about another. 18 U.S.C. § 2679(d)(5); D.C. Code 1981, § 12-301(4). *Mittleman v. United States*, 104 F.3d 410, 1997 U.S. App. LEXIS 350 (C.A.D.C. 1997).

Common-law tort claims brought by black FBI agents against other agents in same office required dismissal; alleged tortious conduct fell outside three-year statute of limitations. D.C. Code 1981, § 12-301(4, 8). *Rochon v. FBI*, 691 F. Supp. 1548, 1988 U.S. Dist. LEXIS 8760 (1988).

Action against former FCC official for unspecified wrongful acts was barred by statute of limitations; acts must have occurred prior to filing of identical complaint five years earlier and statute of limitations was not longer than three years. D.C. Code 1981, § 12-301(8). *Martin-Trigona v. Stewart*, 659 F. Supp. 45, 1987 U.S. Dist. LEXIS 3824 (1987).

District of Columbia three-year statute of limitations for actions "for which a limitation is not otherwise specifically prescribed" applied to federal employee's Bivens action alleging he was denied due process in proceedings before Merit Systems Protection Board by official's alleged intimidation of prospective witnesses. D.C. Code 1981, § 12-301(8). *Hagmeyer v. United States Dep't of Treasury*, 647 F. Supp. 1300, 1986 U.S. Dist. LEXIS 17972 (1986).

Federal employee's common-law defamation claim against supervisory official was subject to one year District of Columbia statute of limitations, and action filed more than one year after latest claimed publication was time barred. D.C. Code 1981, § 12-301(4). *Bartel v. Federal Aviation Admin.*, 617 F. Supp. 190, 1985 U.S. Dist. LEXIS 20594 (1985).

Even though complaint specified constitutional tort sounding in conspiracy, where damage to reputation was central to attorney's claim against present or former officials of Department of Justice in their individual capacity for allegedly disseminating false information relating to her termination, proper statute of limitations was District of Columbia one-year statute of limitations governing defamation actions. D.C. Code 1981, § 12-301(4). *Doe v. United States Dep't of Justice*, 602 F. Supp. 871, 1983 U.S. Dist. LEXIS 12137 (1983), affirmed in part and vacated in part by, remanded by 753 F.2d 1092, 243 U.S. App. D.C. 354, 1985 U.S. App. LEXIS 27761 (1985).

Complaint that recited that upon attorney's removal from position with Department of Jus-

tice, officials in their individual capacity allowed, permitted and aided and abetted in spreading of charges and allegations by other officials concerning attorney's competence, capability and sobriety was time barred, where complaint was filed two years after attorney was terminated from her position with Department of Justice. D.C. Code 1981, § 12-301(4). *Doe v. United States Dep't of Justice*, 602 F. Supp. 871, 1983 U.S. Dist. LEXIS 12137 (1983), affirmed in part and vacated in part by, remanded by 753 F.2d 1092, 243 U.S. App. D.C. 354, 1985 U.S. App. LEXIS 27761 (1985).

Waiver of limitation.

Liability insurer did not waive right to assert statute of limitations by making statement in telephone conversation, later repudiated, that it would pay defense costs of parties who were not named insureds, by indicating possible duty to defend named insureds, by paying named insured, or by requesting contribution from other insurers. D.C. Code 1981, § 12-301(7). *Partnership Placements v. Landmark Ins. Co.*, 722 A.2d 837, 1998 D.C. App. LEXIS 247 (1998).

Surety for former personal representative was interested party in action for accounting, and, therefore, surety waived statute of limitations defense to claim against bond by failing to object to auditor-master's report assessing liability, or otherwise raise issue before probate court. D.C. Code 1981, §§ 12-301(6), 20-523(b); Civil Rule 65.1. *In re Estate of Spinner*, 717 A.2d 362, 1998 D.C. App. LEXIS 179 (1998).

Waiver by maker of note of protection of statute of limitations, when contained in the original instrument creating the obligation, is disfavored. D.C. Code § 12-301. *Toomey v. Cammack*, 345 A.2d 453, 1975 D.C. App. LEXIS 254 (1975).

Weight and sufficiency of evidence.

Evidence that insured knew or should have known of possible cause of action against insurance agency as early as June, 1969, was sufficient to support district court's finding that insured's action against insurance agency filed in September, 1973, was barred by three-year statute of limitations. D.C. Code § 12-301. *Johnson v. Bernard Ins. Agency, Inc.*, 532 F.2d 1382, 1976 U.S. App. LEXIS 12034 (C.A.D.C. 1976).

Record supported trial court's conclusion that homeowner suffered his injury with respect to his causes of action based on construction and design of south wall of addition and its related plumbing five and one-half years before his complaint was filed; thus, statute of limitations would bar recovery based upon those causes of action under negligence theory, absent application of discovery rule. D.C. Code 1981, § 12-

301(3). *Ehrenhaft v. Malcolm Price, Inc.*, 483 A.2d 1192, 1984 D.C. App. LEXIS 554 (1984).

In malpractice suit brought by clients against law firm for allegedly failing to timely file clients' claim, clients' contention that firm concealed running of statute of limitations on their claim thereby tolling running of applicable limitation period as to their malpractice suit was not supported by evidence, that is, there was no evidence that firm employed any means to mislead clients. D.C. Code § 12-301. *Weisberg v. Williams, Connolly & Califano*, 390 A.2d 992, 1978 D.C. App. LEXIS 552 (1978).

Evidence was sufficient to sustain position that breach of retainer contract, whereby attorney had promised to return retainer if unsuccessful in his efforts to obtain release of his clients' son, occurred within three years prior to institution of suit for return of part of retainer. D.C. Code 1961, § 12-301. *Bowles v. Dobson*, 206 A.2d 271, 1965 D.C. App. LEXIS 137 (App. 1965).

Creditor who testified as to part payments received on account from debtor and who introduced ledger sheets showing amounts received in part payment and the corresponding dates satisfied burden of proving payments which tolled the statute of limitations with respect to debt. D.C. Code 1961, § 12-201. *Dulberger v. Lippe*, 202 A.2d 777, 1964 D.C. App. LEXIS 263 (App. 1964).

There was competent evidence to support finding of open, mutual running account between insurance brokers and customer so that suit for balance was not barred in part by limitation. *Wesley v. Brown*, 196 A.2d 921, 1964 D.C. App. LEXIS 182 (App. 1964).

In replevin action for restaurant equipment allegedly sold to defendant, wherein seller failed to prove execution of conditional sales contract, evidence on issue of part-payment, as respects defense of limitations, sustained finding for defendant. *Stern Equipment Co. v. Pogue*, 117 A.2d 447, 1955 D.C. App. LEXIS 214 (Cr.App. 1955).

Where two credits of \$5 each in account coincided with two charges of \$5 each for heart examinations on such dates, there was no evidence of payment on account which would permit recovery by physician for services performed more than three years before patient's death. *Rossiter v. National Sav. & Trust Co.*, 46 A.2d 540, 1946 D.C. App. LEXIS 116 (Cr.App. 1946).

Proof of purchases of shoes by attorney from client engaged in retail shoe business, with understanding that price of shoes purchased would be credited on attorney's claim for services rendered, established such "payments on account" as tolled statute of limitations against claim for services. *Tendler v. L. E. Massey, Inc.*, 33 A.2d 626, 1943 D.C. App. LEXIS 178 (Cr.App. 1943).

§ 12-302. Disability of plaintiff.

(a) Except as provided by subsection (b) of this section, when a person entitled to maintain an action is, at the time the right of action accrues:

- (1) under 18 years of age; or
- (2) non compos mentis; or
- (3) imprisoned —

he or his proper representative may bring action within the time limited after the disability is removed.

(b) When a person entitled to maintain an action for the recovery of lands, tenements, or hereditaments, or upon an instrument under seal, is under any of the disabilities specified by subsection (a) of this section at the time the right of action accrues, he or his proper representative, except where otherwise specified herein, may bring the action within 5 years after the disability is removed, and not thereafter.

(Dec. 23, 1963, 77 Stat. 510, Pub. L. 88-241, § 1; Mar. 16, 1978, D.C. Law 2-61, § 2, 24 DCR 6011.)

Section references. — This section is referred to in § 12-308.

Prior Codifications. — 1981 Ed., § 12-302. 1973 Ed., § 12-302.

Legislative history of Law 2-61. — Law 2-61, the "An Amendment to the District of

Columbia Age of Majority Act," was introduced in Council and assigned Bill No. 2-165, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on September 13, 1977 and October 11, 1977, respectively.

Signed by the Mayor on January 11, 1978, it was assigned Act No. 2-131 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Authority to bring action.
Bipolar disorder.
Conviction or imprisonment for crime.
Dismissal.
Infancy.
Insanity or other incompetency.

Authority to bring action.

Plaintiff was not authorized to bring suit on behalf of his adopted son's biological father, although biological father lived in Romania and was not fluent in English, where plaintiff failed to show that biological father was legally incompetent. *Ficken v. AMR Corp.*, 578 F.Supp.2d 134, 2008 U.S. Dist. LEXIS 75434 (2008).

Plaintiff was not authorized to bring suit on behalf of his adopted son, although son was a minor at time allegedly tortious conduct had occurred, where son was older than 18 years of age at time of lawsuit, and power of attorney signed by son was not duly executed because it was not notarized or dated and did not list son's social security number. *Ficken v. AMR Corp.*, 578 F.Supp.2d 134, 2008 U.S. Dist. LEXIS 75434 (2008).

Bipolar disorder.

Former employee was not non compos mentis under District of Columbia law, as would toll Equal Employment Opportunity Commission (EEOC) 45-day time period for filing complaint alleging that he was constructively discharged on the basis of his bipolar disorder in violation of the Rehabilitation Act, absent evidence he was ever adjudged incompetent, had a caretaker appointed or took measures to let someone handle his affairs during limitations period, and where employee applied to take foreign service examination, passed exam's written examination and drafted a letter to human resources to complain about alleged constructive discharge during the limitations period. *Perry v. United States Dep't of State*, 669 F.Supp.2d 60, 2009 U.S. Dist. LEXIS 107249 (2009).

Conviction or imprisonment for crime.

Whatever statute of limitations applied to claim for an assault arising out of plaintiff's arrest was tolled by plaintiff's imprisonment. D.C. Code 1981, § 12-302. *McClam v. Barry*, 697 F.2d 366, 1983 U.S. App. LEXIS 27892 (C.A.D.C. 1983).

District of Columbia limitations statute governing Bivens claims brought by detainee

against federal officials, stemming from alleged five-month jail overdetention, would not be tolled by detainee's imprisonment for due process claims related to issuance of Notice of Escape following refusal of readmission to half-way house, since purported injury occurred prior to detainee's imprisonment. *Wormley v. United States*, 601 F.Supp.2d 27, 2009 U.S. Dist. LEXIS 14118 (2009).

District of Columbia limitations statute governing Bivens claims brought by detainee against federal officials, stemming from alleged five-month jail overdetention, would be tolled during detainee's imprisonment following issuance of detainer, to extent that alleged injuries occurred during imprisonment. *Wormley v. United States*, 601 F.Supp.2d 27, 2009 U.S. Dist. LEXIS 14118 (2009).

Under District of Columbia law, statute of limitations is tolled when plaintiff is imprisoned at time cause of action accrues. *Fletcher v. District of Columbia*, 481 F.Supp.2d 156, 2007 U.S. Dist. LEXIS 21078 (2007), vacated in part by, dismissed in part by 550 F. Supp. 2d 30, 2008 U.S. Dist. LEXIS 36402 (D.D.C. 2008).

Under District of Columbia law, one-year statute of limitations for arrestee's common law tort claims against arresting officers was tolled until arrestee was released from jail. *Fernandors v. District of Columbia*, 382 F.Supp.2d 63, 2005 U.S. Dist. LEXIS 16686 (2005).

Under District of Columbia statute which provides that when a person is "imprisoned" at the time the right of action accrues, then that person "may bring action within the time limit after the disability is removed," only upon a prisoner's release from that arrest does the statute of limitations begin to run again. *Fernandors v. District of Columbia*, 382 F.Supp.2d 63, 2005 U.S. Dist. LEXIS 16686 (2005).

Under District of Columbia law, for an action that accrues during an arrest, statute which provides that when a person is "imprisoned" at the time the right of action accrues, then that person "may bring action within the time limit after the disability is removed," tolls the statute of limitations during the time of any imprisonment resulting from that arrest. *Fernandors v. District of Columbia*, 382 F.Supp.2d 63, 2005 U.S. Dist. LEXIS 16686 (2005).

Under District of Columbia law, statute of limitations applicable to client's legal malpractice action was tolled due to client's imprisonment at time cause of action accrued. D.C. Code

1981, § 12-302(a)(3). *Proctor v. Morrissey*, 979 F. Supp. 29, 1997 U.S. Dist. LEXIS 17521 (1997).

Prisoner's section 1983 claims, which sought monetary damages as result of alleged violation of speedy trial provisions of Interstate Agreement on Detainers, were not time barred where prisoner remained incarcerated. D.C. Code 1981, § 12-302(a)(3); 42 U.S.C. § 1983; Interstate Agreement on Detainers Act, §§ 1-8, 18 U.S.C. Murray v. District of Columbia, 826 F. Supp. 4, 1993 U.S. Dist. LEXIS 9309 (1993).

Statute of limitations for prisoner's civil rights action was tolled under exception to limitations period treating prisoners as disabled individuals. D.C. Code 1981, §§ 12-301, 12-301(1-8), 12-302(a), (a)(3). *La Gon v. Barry*, 658 F. Supp. 55, 1987 U.S. Dist. LEXIS 2839 (1987).

Even if statute of limitations for legal malpractice claim was tolled by operation of District of Columbia disability statute during time that plaintiff, a convicted Watergate conspirator, was imprisoned, his release from prison prior to date that his claim accrued removed such disability and commenced the running of the statute. D.C. Code §§ 12-301, 12-302(a). *Hunt v. Bittman*, 482 F. Supp. 1017, 1980 U.S. Dist. LEXIS 9795 (1980), affirmed without opinion by 652 F.2d 196, 209 U.S. App. D.C. 203 (1981).

Statute of limitations applicable to inmate's claim to challenge solitary confinement in reprisal for exercising constitutional rights was tolled by imprisonment at the time claim accrued. *Murray v. District of Columbia*, 870 A.2d 25, 2005 D.C. App. LEXIS 56 (2005).

Former inmate's incarceration tolled one-year statute of limitations for inmate's claims against Mayor of District of Columbia, Department of Corrections (DOC), DOC officials, jail doctor, and correctional officers alleging that negligent training and supervision of officers resulted in inmate's being assaulted on several occasions by officers and once by psychiatric block inmate. D.C. Code 1981, § 12-302(a). *Hicks v. District of Columbia*, 733 A.2d 336, 1999 D.C. App. LEXIS 147 (1999).

Arrestee's erroneous release from custody irrevocably triggered statute of limitations on his tort action that accrued at time of his arrest, even though statute was tolled while he was imprisoned, and even though he was rearrested; arrestee was immediately able to pursue his claim, time within which law allowed him to do so began to run at moment of his release, and statute of limitations was not tolled until subsequent lawful parole. D.C. Code 1981, § 12-302(a). *District of Columbia v. Tinker*, 691 A.2d 57, 1997 D.C. App. LEXIS 35 (1997).

Two-year statute of limitations on client's claim against his criminal attorney for legal

malpractice was tolled, pursuant to statute, during time of client's imprisonment which began immediately after his cause of action accrued. D.C. Code 1981, §§ 12-301, 12-302(a)(3). *Brown v. Jonz*, 572 A.2d 455, 1990 D.C. App. LEXIS 80 (1990).

Civil rights plaintiff did not have any "real disabilities" from litigating while on parole such that statute of limitations governing his action should be tolled after he was released from prison; plaintiff was vigorous litigant while in prison. 42 U.S.C. § 1983; D.C. Code 1981, §§ 12-301(8), 12-302(a)(3). *Cannon v. District of Columbia*, 569 A.2d 595, 1990 D.C. App. LEXIS 18 (1990).

Dismissal.

Issue of whether arrestee's assault and battery claims against police officers were barred by District of Columbia's statute of limitations could not be resolved at motion to dismiss phase because of factual dispute as to whether arrestee was imprisoned following arrest, as would toll limitations period. *Jones v. Ritter*, 587 F.Supp.2d 152, 2008 U.S. Dist. LEXIS 94383 (2008).

Although one-year period under District of Columbia law to bring action for assault or battery is tolled if a plaintiff is imprisoned at the time the right of action accrues, the plaintiff's disability is removed at the instant he is released from custody, at which time the statute of limitations begins to run and continues to run even if plaintiff subsequently is arrested or imprisoned. *Jones v. Ritter*, 587 F.Supp.2d 152, 2008 U.S. Dist. LEXIS 94383 (2008).

Infancy.

Dismissal with prejudice of juvenile plaintiffs' common law claims, under District of Columbia law, arising from police officers' alleged use of batons against the plaintiffs, was not warranted; although plaintiffs erroneously conceded that the juveniles' claims were time-barred, the limitations period for those claims was tolled until juveniles reached age of majority, so that dismissal without prejudice was appropriate. *Rudder v. Williams*, 666 F.3d 790, 2012 U.S. App. LEXIS 910 (C.A.D.C. 2012).

Limitation period for minor's cause of action for medical malpractice does not begin to run until he has attained his majority. D.C. Code § 12-302(a)(1). *Canterbury v. Spence*, 464 F.2d 772, 1972 U.S. App. LEXIS 9467 (C.A.D.C. 1972).

Under District of Columbia law, if a minor is injured, then the statute of limitations is tolled until the minor reaches the age of eighteen. *Osuchukwu v. Gallaudet Univ.*, 296 F.Supp.2d 1, 2002 U.S. Dist. LEXIS 27009 (2002).

Attorney's ignorance that limitations period for medical malpractice claim brought on behalf of infant would be tolled until infant

reached age 18 was not entitled to any weight, when determining proper disciplinary sanction for attorney's failure to represent client with skill and care; while parents were rushed into filing medical malpractice action because attorney had advised them the limitations period would expire soon, there was no evidence parents would have wished to postpone the filing of action if they had been advised of the tolling, limitations period for mother's intertwined claim for loss of wages would not have been tolled, and action was filed primarily as a settlement tool. In re Nwadike, 905 A.2d 221, 2006 D.C. App. LEXIS 480 (2006).

Even if testator's son had claim based on testator's brother's promise to pay widow's legal expenses, statute of limitations began to run on son's 18th birthday, so that any claims for damages resulting from brother's failure to pay widow's legal expenses in 1966, as he allegedly promised in order to induce her dismiss claims against him, were barred by statute of limitations. D.C. Code 1981, §§ 12-301(7, 8), 12-302(a)(1). Interdonato v. Interdonato, 521 A.2d 1124, 1987 D.C. App. LEXIS 292 (1987).

The one year statute of limitations contained in the wrongful death statute is not tolled by surviving heir's minority. D.C. Code 1981, §§ 12-101 et seq., 12-302(a)(1). Group Health Asso. v. Gatlin, 463 A.2d 700, 1983 D.C. App. LEXIS 423 (1983).

Statute providing that when a person entitled to maintain an action is under 18 years old at the time the right of action accrues, he or his representative may bring an action within the time limited after the disability is removed presupposes that a right of action exists and that the claimant is entitled to maintain the action. D.C. Code 1973, § 12-302. Gwinn v. District of Columbia, 434 A.2d 1376, 1981 D.C. App. LEXIS 354 (1981).

A child's right to maintain an action for child support is available to him or her throughout her minority, and the applicable limitation period does not begin to run until the child reaches the age of majority; additionally, absent a specific statutory limitation period the general three-year period will apply. Davis v. Davis, 121 WLR 1721 (Super. Ct. 1993).

Insanity or other incompetency.

Impaired judgment alone is not enough to toll the statute of limitations. McCracken v. Walls-Kaufman, 717 A.2d 346, 1998 D.C. App. LEXIS 170 (1998).

Though not defined in governing District of Columbia statute for purposes of tolling statute of limitations, phrase "non compos mentis" generally refers to someone incapable of handling her own affairs or unable to function in society. D.C. Code 1981, § 12-302. Smith-Haynie v. District of Columbia, 155 F.3d 575, 1998 U.S. App. LEXIS 23295 (C.A.D.C. 1998).

Impaired judgment alone is not enough to toll statute of limitations under District of Columbia law, but, rather, disability of a person claiming to be non compos mentis must be of such a nature as to show she is unable to manage her business affairs or estate, or to comprehend her legal rights or liabilities. D.C. Code 1981, § 12-302. Smith-Haynie v. District of Columbia, 155 F.3d 575, 1998 U.S. App. LEXIS 23295 (C.A.D.C. 1998).

Employee failed to establish that she was non compos mentis during Title VII's 90-day limitation period, so as to warrant tolling the limitations period, based on her statements that she was confused by her right-to-sue letter, did not understand it, and was further traumatized and simply unable to psychologically deal with it, and that she was unable to go to work due to emotional difficulty related to the work environment; plaintiff's affidavit did not yield reasonable inference that she was incapable of handling her own affairs and functioning in society. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C. § 2000e et seq.; D.C. Code 1981, § 12-302. Smith-Haynie v. District of Columbia, 155 F.3d 575, 1998 U.S. App. LEXIS 23295 (C.A.D.C. 1998).

Using District of Columbia non compos mentis law as a touchstone, equitable tolling doctrine can fairly be read to encompass cases where Title VII plaintiff has been unable to obtain information bearing on the existence of her claim because of disability. Civil Rights Act of 1964, § 701 et seq., 42 U.S.C. § 2000e et seq.; D.C. Code 1981, § 12-302. Smith-Haynie v. District of Columbia, 155 F.3d 575, 1998 U.S. App. LEXIS 23295 (C.A.D.C. 1998).

Plaintiff's impaired judgment alone is not enough to toll the statute of limitations under District of Columbia law. Gallucci v. Schaffer, 507 F.Supp.2d 85, 2007 U.S. Dist. LEXIS 63050 (2007), affirmed by 2008 U.S. App. LEXIS 3235 (D.C. Cir. Feb. 11, 2008).

Under District of Columbia law, a person is mentally unsound for purposes of tolling civil statute of limitations when the disability is of such a nature as to show that a plaintiff is unable to manage his business affairs or estate, or to comprehend his legal rights or liabilities. Gallucci v. Schaffer, 507 F.Supp.2d 85, 2007 U.S. Dist. LEXIS 63050 (2007), affirmed by 2008 U.S. App. LEXIS 3235 (D.C. Cir. Feb. 11, 2008).

Under District of Columbia law, the statute of limitations for a claim is tolled if a plaintiff is incapable of handling their own affairs or unable to function in society. Gallucci v. Schaffer, 507 F.Supp.2d 85, 2007 U.S. Dist. LEXIS 63050 (2007), affirmed by 2008 U.S. App. LEXIS 3235 (D.C. Cir. Feb. 11, 2008).

Client's affirmed statement that he was physically injured while on night patrol during his service in the Vietnam War was insufficient to

establish that he was mentally unsound, as would have tolled statute of limitations under District of Columbia law on client's legal malpractice claim. *Gallucci v. Schaffer*, 507 F.Supp.2d 85, 2007 U.S. Dist. LEXIS 63050 (2007), affirmed by 2008 U.S. App. LEXIS 3235 (D.C. Cir. Feb. 11, 2008).

Person is mentally unsound, for purposes of tolling civil statute of limitations, when the disability is of such a nature as to show that plaintiff is unable to manage his business affairs or estate, or to comprehend his legal rights or liabilities. *McCracken v. Walls-Kaufman*, 717 A.2d 346, 1998 D.C. App. LEXIS 170 (1998).

Patient's mental state could not serve to toll statute of limitations on her husband's loss of consortium claim against chiropractor who allegedly sexually assaulted patient. *McCracken v. Walls-Kaufman*, 717 A.2d 346, 1998 D.C. App. LEXIS 170 (1998).

Statute of limitations was not tolled on transcendental meditation (TM) practitioner's fraud claims, against organizations that pro-

moted and taught TM, based on alleged mental impairment resulting from "social pressure" and "philosophical indoctrination," where practitioner made no claim of total repression, did not claim she was non compos mentis, and abandoned theory of "thought reform," but admitted in her deposition testimony and in her answers to interrogatories that she knew many relevant facts well before three years before filing suit. D.C. Code 1981, § 12-301(8). *Hendel v. World Plan Exec. Council*, 705 A.2d 656, 1997 D.C. App. LEXIS 290 (1997).

Under subsection (a), the only "psychological state" that affects the accrual of a statute of limitations provision is a showing that a plaintiff was, as a matter of law, mentally incompetent at the time the action accrued. If plaintiff's psychological impairment did not render her non compos mentis, then the impairment is factually and legally irrelevant and will not serve to toll the statute of limitations. *Hendel v. World Health Plan Executive Council*, 124 WLR 957 (Super. Ct. 1996).

§ 12-303. Absence or concealment of defendant.

(a) When a person who is a resident of the District of Columbia is out of the District or has absconded or concealed himself at the time a cause of action accrues against him, the period limited for the bringing of the action does not begin to run until he comes into the District or while he is so absconded or concealed.

(b) When such a person absconds or conceals himself after the cause of action accrues, the time of his absence or concealment may not be computed as a part of the period within which the action must be brought.

(Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 12-303. 1973 Ed., § 12-303.

CASE NOTES

Questions of law and fact.

Absence or concealment of defendant under this section is a question of fact not susceptible

to a motion for judgment on the pleadings or a motion to dismiss. *Huntsman v. Park*, 112 WLR 657 (Super. Ct. 1984).

§ 12-304. Actions stayed by court or statute.

When the bringing of an action is stayed by an injunction or other order of a court of justice, or by statutory prohibition, the time of the stay may not be computed as a part of the period within which the action must be brought.

(Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 12-304. 1973 Ed., § 12-304.

§ 12-305. Actions against decedents' estates.

In an action against the estate of a deceased person, the interval, not exceeding two years, between the death of the deceased and 6 months after the date of the first publication of notice of the appointment of a personal representative under section 20-704 may not be computed as a part of the period within which the action must be brought.

(Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1; June 24, 1980, D.C. Law 3-72, § 202(a), 27 DCR 2155.)

Section references. — This section is referred to in § 12-308.

Prior Codifications. — 1981 Ed., § 12-305. 1973 Ed., § 12-305.

Legislative history of Law 3-72. — Law 3-72, the "District of Columbia Probate Reform Act of 1980," was introduced in Council and

assigned Bill No. 3-91, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 1, 1980 and April 22, 1980, respectively. Signed by the Mayor on May 7, 1980, it was assigned Act No. 3-181 and transmitted to both Houses of Congress for its review.

§ 12-306. Directions as to debts in a will. [Repealed].

Repealed.

(June 24, 1980, D.C. Law 3-72, § 202(b), 27 DCR 2155.)

Prior Codifications. — 1981 Ed., § 12-306.

Legislative history of Law 3-72. — For

legislative history of D.C. Law 3-72, see Historical and Statutory Notes following § 12-305.

§ 12-307. Foreign judgments.

An action upon a judgment or decree rendered in a State, territory, commonwealth or possession of the United States or in a foreign country is barred if by the laws of that jurisdiction, the action would there be barred and the judgment or decree would be incapable of being otherwise enforced there.

(Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1.)

Section references. — This section is referred to in § 12-308.

Prior Codifications. — 1981 Ed., § 12-307. 1973 Ed., § 12-307.

CASE NOTES

In general.

Three-year District of Columbia statute of limitations was not tolled by attorney's filing of suit against clients in Ohio to recover fee. D.C. Code§ 12-301(7). *Brown v. Lamb*, 414 F.2d

1210, 1969 U.S. App. LEXIS 11460 (C.A.D.C. 1969), writ of certiorari denied by 397 U.S. 907, 90 S. Ct. 904, 25 L. Ed. 2d 88, 1970 U.S. LEXIS 2977 (1970).

§ 12-308. Actions by the United States.

Sections 12-301, 12-302, 12-305, and 12-307 do not apply to an action in which the United States is the real and not merely the nominal plaintiff.

(Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 12-308. 1973 Ed., § 12-308.

§ 12-309. Actions against District of Columbia for unliquidated damages; time for notice.

An action may not be maintained against the District of Columbia for unliquidated damages to person or property unless, within six months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the Mayor of the District of Columbia of the approximate time, place, cause, and circumstances of the injury or damage. A report in writing by the Metropolitan Police Department, in regular course of duty, is a sufficient notice under this section.

(Dec. 23, 1963, 77 Stat. 511, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 551, Pub. L. 91-358, title I, § 141(2); Apr. 30, 1988, D.C. Law 7-104, § 2(b), 35 DCR 147.)

Cross references. — Claims against District, see §§ 2-401 to 2-406.

Governmental immunity for employee's operation of vehicles, actions brought in conformance with this section, see § 2-413.

Liability of District employees, see §§ 2-411 to 2-416.

Merit system grievance proceedings, limitation of actions, see § 1-615.54.

Unjust imprisonment, application of this section, see § 2-424.

Prior Codifications. — 1981 Ed., § 12-309. 1973 Ed., § 12-309.

Emergency legislation. — For temporary (90 day) amendment of section, see § 3 of District of Columbia Employee Non-Liability and Notice of Claim Clarification Emergency Amendment Act of 2002 (D.C. Act 14-499, October 23, 2002, 49 DCR 10022).

Legislative history of Law 7-104. — Law

7-104, the "Technical Amendments Act of 1987," was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Delegation of Authority. — Delegation of Duty to Receive Notice Under D.C. Code § 12-309, see Mayor's Order 2000-167, November 2, 2000 (47 DCR 9533).

Mayor's Orders. — Delegation of Duty to Receive Notice under D.C. Official Code § 12-309, see Mayor's Order 2004-10, January 20, 2004 (51 DCR 1455).

Handling of Legal Correspondence, see Mayor's Order 2004-77, May 14, 2004 (51 DCR 5280).

CASE NOTES

ANALYSIS

Accrual of claim.

Actions and proceedings generally.

Actions requiring notice.

Actual notice.

Administrative proceedings.

Class actions.

Complaint as notice.

Construction and application.

Construction with other laws.

Contents of notice.

—Cause and circumstances, contents of notice.

—In general.

—Injury or damage, contents of notice.

—Specificity and completeness, contents of notice.

—Sufficiency generally, contents of notice.

—Time and place, contents of notice.

Defenses.

Dismissal.

Federal claims.

Federal courts generally.

In general.

Mandamus and other writs.

Manner of notice.

Minors.

Necessity of notice.

Pleadings.

Police reports.

—Cause and circumstances, police reports.

—In general.

—Injury or damage, police reports.

—Investigations by District, police reports.

—Specificity, police reports.

—Sufficiency generally, police reports.

Purpose.
 Questions of fact.
 Requisites of notice generally.
 Review.
 Standing.
 Sufficiency of evidence.
 Timeliness of notice generally.
 Tolling of time.
 Waiver and estoppel.

Accrual of claim.

Sixty-one-year-old employee of Child Support Services Division (CSSD) of District of Columbia Officer of Attorney General, who was not selected for promotions from DS-11 level to DS-12 level, was required, under District of Columbia Human Rights Act (DCHRA), to notify mayor of her alleged injury within six months of her non-selection, as prerequisite to filing action under Age Discrimination in Employment Act (ADEA) against District of Columbia. *Faison v. District of Columbia*, 664 F.Supp.2d 59, 2009 U.S. Dist. LEXIS 96037 (2009).

Plaintiff's civil rights action against District of Columbia and police department accrued, and statute of limitations began to run, when injury or damage was sustained. *Hall v. Lanier*, 583 F.Supp.2d 135, 2008 U.S. Dist. LEXIS 86719 (2008).

One-year limitations period applicable to arrestee's claims against District of Columbia and police officers for common-law assault and battery, false arrest and false imprisonment began to run at time of arrestee's alleged injury, rather than date arrestee gave statutorily required written notice to District of Columbia. D.C. Code 1981, §§ 12-301(4), 12-309. *Williams v. District of Columbia*, 676 F. Supp. 329, 1987 U.S. Dist. LEXIS 12575 (1987).

Duty to provide written notice to mayor to District of Columbia concerning circumstances surrounding claim against District generally attaches as soon as plaintiff suffers actionable injury, inasmuch as in typical case once injury is sustained at hands of municipal employees, plaintiff is immediately at liberty to take his claims to the court and nothing further needs to take place to render claim ripe for judicial resolution. D.C. Code § 12-309. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

District of Columbia (DC) did not waive affirmative defenses, based on notice requirements and statutes of limitations, to former employee's disability discrimination claims under Rehabilitation Act and DC's Human Rights Act (HRA) by failing to assert either defense in answer to amended complaint and instead waiting two years before raising defenses for the first time in DC's summary judgment motion; employee had and exercised a full and fair opportunity to respond to DC's tardy invocation

of those defenses and was therefore not prejudiced. *Jaiyeola v. District of Columbia*, 40 A.3d 356, 2012 D.C. App. LEXIS 135 (2012).

Because patients in a failure to diagnose case generally suffer from an ailment when they first seek treatment, the injury in these cases is the worsening or deterioration of the patient's condition that results from the physician's failure to diagnose the patient's medical condition for purposes of determining when statutory 6 month notice period begins to run when claimant sues the District of Columbia pursuant to statute prohibiting suits against District of Columbia unless District is notified of injury within six months. *Brown v. District of Columbia*, 853 A.2d 733, 2004 D.C. App. LEXIS 385 (2004).

An injury that results from a physician's negligent failure to diagnose a medical condition occurs when the patient's condition worsens as a result of the physician's negligence for purposes of determining when statutory 6 month notice period begins to run when claimant sues the District of Columbia pursuant to statute prohibiting suits against District of Columbia unless District is notified of injury within six months. *Brown v. District of Columbia*, 853 A.2d 733, 2004 D.C. App. LEXIS 385 (2004).

Unlike a statute of limitations, which can be tolled through the discovery rule, statute prohibiting suits against District of Columbia unless District is notified of injury within six months starts the clock at the instant an injury or damage is sustained. *Brown v. District of Columbia*, 853 A.2d 733, 2004 D.C. App. LEXIS 385 (2004).

The date of injury is not when the claimant knew or should have known of his injury, but, rather, when that injury was actually sustained for purposes of determining when statutory 6 month notice period begins to run when claimant sues the District of Columbia pursuant to statute prohibiting suits against District of Columbia unless District is notified of injury within six months. *Brown v. District of Columbia*, 853 A.2d 733, 2004 D.C. App. LEXIS 385 (2004).

A defendant who wishes to bring a complaint against the District of Columbia as a third party is "injured" for purposes of statute requiring notice to the District of a complaint for damages within six months after the injury or damage was sustained, when he or she has been served with the plaintiff's complaint for damages. *Hubbard v. Chidel*, 790 A.2d 558, 2002 D.C. App. LEXIS 23 (2002), remanded by 840 A.2d 689, 2004 D.C. App. LEXIS 3 (D.C. 2004).

Six month time period in which radiologist's employer was required to give notice of its contribution claim against District of Columbia began when employer was added to patient's

malpractice complaint and given notice of that complaint, and thus employer's notice was timely. *Hubbard v. Chidel*, 790 A.2d 558, 2002 D.C. App. LEXIS 23 (2002), remanded by 840 A.2d 689, 2004 D.C. App. LEXIS 3 (D.C. 2004).

Six-month period in which notice of claim was required to be given to District of Columbia commenced to run when infant child who had ingested lead-based paint chips while residing at District public housing project was treated for lead poisoning, rather than when she was diagnosed with neuropsychological damage several years later; injury was "sustained" within meaning of notice statute when harmful material entered infant's body, was discovered, and resulted in significant medical procedures, although extent of injury was not known at the time. D.C. Code 1981, § 12-309. *District of Columbia v. Ross*, 697 A.2d 14, 1997 D.C. App. LEXIS 131 (1997).

Injury is "sustained," for purposes of statute prohibiting suits against District of Columbia unless District is notified of injury within six months, when defendant's negligence causes foreign substance with harmful potential to be introduced in body, or at latest, when substance is discovered in body and medical procedures are given. D.C. Code 1981, § 12-309. *District of Columbia v. Ross*, 697 A.2d 14, 1997 D.C. App. LEXIS 131 (1997).

Lack of awareness of seriousness of injury does not excuse failure to give notice of fact of injury to District of Columbia for purposes of statute prohibiting suits against District unless it is notified of injury within six months of when it is sustained. D.C. Code 1981, § 12-309. *District of Columbia v. Ross*, 697 A.2d 14, 1997 D.C. App. LEXIS 131 (1997).

Statute requiring written notice to District of Columbia within six months after injury or damage is sustained before action may be maintained against District for unliquidated damages requires that District receive the written notice within six months of injury giving rise to claim. D.C. Code § 12-309. *De Kine v. District of Columbia*, 422 A.2d 981, 1980 D.C. App. LEXIS 388 (1980).

Claim of operators of horse-drawn carriages for hire against District of Columbia for impoundment of horses was not to be measured from date horses were released by District, for purpose of determining whether letter to District giving notice of impoundment claim was timely under six-month period provided by statute, but from date of their seizure. D.C. Code § 12-309. *De Kine v. District of Columbia*, 422 A.2d 981, 1980 D.C. App. LEXIS 388 (1980).

Cause of action for alleged intentional and malicious interference by District of Columbia with conduct of horse-drawn carriage business accrued, for purpose of statutory six-month period for provision of timely notice of injury to

District, not when business was terminated but when alleged interference was sustained as direct result of purported tortious acts of District, for which operators of horse-drawn carriage business had acknowledged actual and immediate damage. D.C. Code § 12-309. *De Kine v. District of Columbia*, 422 A.2d 981, 1980 D.C. App. LEXIS 388 (1980).

Gist of a claim of unlawful seizure or impoundment is conversion or trespass to chattels, which relates inquiry to moment of the taking. D.C. Code § 12-309. *De Kine v. District of Columbia*, 422 A.2d 981, 1980 D.C. App. LEXIS 388 (1980).

Cause of action for unconsented-to tubal ligation accrued upon discovery that either deliberate tubal ligation or surgical trauma might have occurred to woman, and thus failure to notify District of Columbia until more than six months after date of such discovery caused such action to be barred. D.C. Code § 12-309. *Kelton v. District of Columbia*, 413 A.2d 919, 1980 D.C. App. LEXIS 278 (1980).

Where claimant in damage action against District of Columbia was ambulatory when discharged from hospital following five months' treatment for burns he had suffered when fire started in his bed at District of Columbia General Hospital, claimant's allegation that he "was feeling pretty bad" and "didn't know what to do" after discharge did not raise genuine issue as to whether wrongful act of hospital made claimant incapable of providing notice of claim against District of Columbia within month remaining of statutory six-month notice period. D.C. Code § 12-309. *Hill v. District of Columbia*, 345 A.2d 867, 1975 D.C. App. LEXIS 257 (1975).

The notice period under this section for a third-party plaintiff to give the District notice of a claim begins to run from the time defendant is sued. *Thomas v. Group Health Ass'n*, 114 WLR 1493 (Super. Ct. 1986).

Actions and proceedings generally.

Trial court properly treated government's motion to dismiss damage action for noncompliance with rule that written notice of claim against District of Columbia be given within six months of claimant's injury as in effect, a motion for summary judgment, where court considered evidence presented at hearing at which claimant submitted records and testimony in attempt to raise genuine factual issue as to his inability to provide notice within statutory period. D.C. Code § 12-309; D.C. Code SCR, Civil Rules 12(c), 56, 56(e). *Hill v. District of Columbia*, 345 A.2d 867, 1975 D.C. App. LEXIS 257 (1975).

Decision of United States Court of Appeals with respect to statute pertaining to notice of a claim against District of Columbia, constituted law of the case since it had jurisdiction to

review decision of District of Columbia Court of Appeals when decision of District of Columbia Court of Appeals was rendered and when petition for allowance of appeal was filed but where decision was rendered after effective date of statute providing that decisions of District of Columbia Court of Appeals would no longer be subject to review by United States Court of Appeals, decision would constitute no binding precedent on future cases in District of Columbia Court of Appeals. D.C. Code §§ 11-321, 12-309. *District of Columbia v. Smith*, 297 A.2d 787, 1972 D.C. App. LEXIS 290 (1972).

Actions requiring notice.

Requirement that mayor receive written notice of cause and circumstances of injury or damages within six months in order to maintain claim against District of Columbia for unliquidated damages applied to plaintiff's constitutional tort claims as well as common-law tort claims; thus, District of Columbia would be dismissed as a party where plaintiff failed to comply with notice provision with regard to any of his claims against District. D.C. Code 1981, § 12-309. *McClam v. Barry*, 697 F.2d 366, 1983 U.S. App. LEXIS 27892 (C.A.D.C. 1983).

Employee sought unliquidated damages, and therefore, dismissal of employee's action against employer under the District of Columbia Human Rights Act (DCHRA) was warranted, where employee sought compensatory damages for pain and suffering, and failed to give required notice under District of Columbia notice statute. *Elzeneiny v. District of Columbia*, 699 F.Supp.2d 31, 2010 U.S. Dist. LEXIS 29726 (2010).

Compliance with notice requirements is a mandatory prerequisite to filing a tort action against the District of Columbia. *Barnhardt v. District of Columbia*, 601 F.Supp.2d 324, 2009 U.S. Dist. LEXIS 19672 (2009), remanded by 425 Fed. Appx. 2, 2011 U.S. App. LEXIS 11462 (D.C. Cir. 2011).

District of Columbia notice provisions as to actions for unliquidated damages against the District did not operate as a bar on terminated court employee's wrongful termination claim, to the extent that the relief sought by employee was easily ascertainable, in the form of back pay and benefits. *Chisholm v. District of Columbia*, 533 F.Supp.2d 175, 2008 U.S. Dist. LEXIS 9954 (2008).

District of Columbia employees were required to provide notice to Mayor prior to bringing claims based on District of Columbia Human Rights Act (DCHRA), as those claims were not creations of federal law. *Giardino v. District of Columbia*, 505 F.Supp.2d 117, 2007 U.S. Dist. LEXIS 63201 (2007), dismissed without prejudice by 252 F.R.D. 18, 2008 U.S. Dist. LEXIS 62499 (D.D.C. 2008).

Vehicle owners' claims against the District of Columbia arising from costs of towing and storage of their vehicles without adequate notice, alleging breach of bailment, conversion, and civil conspiracy, were unliquidated and, thus, were subject to the statute requiring notice to the District of intent to sue. *Snowder v. District of Columbia*, 949 A.2d 590, 2008 D.C. App. LEXIS 261 (2008).

Patient was not required to give notice to the District of Columbia before bringing medical malpractice suit against physician in his individual capacity, even though the District was required to indemnify him as a medical employee. *George v. Dade*, 769 A.2d 760, 2001 D.C. App. LEXIS 77 (2001).

When the District of Columbia must indemnify a medical employee sued in his individual capacity for medical negligence committed within the scope of his employment, the complainant is not required to give notice of the claim to the District within six months after the injury or damage was sustained. *George v. Dade*, 769 A.2d 760, 2001 D.C. App. LEXIS 77 (2001).

District of Columbia Water and Sewer Authority (WASA) was a separate corporate entity that was amenable to suit in its own name, and thus action against WASA was not an action against the District of Columbia that would require pre-suit notice. *Dingwall v. District of Columbia Water & Sewer Auth.*, 766 A.2d 974, 2001 D.C. App. LEXIS 40 (2001), vacated by 773 A.2d 423, 2001 D.C. App. LEXIS 121 (D.C. 2001), reinstated by, remanded by 800 A.2d 686, 2002 D.C. App. LEXIS 307 (D.C. 2002).

Statutory notice requirement was not applicable to inmate's action against university, alleging that he was wrongfully denied diploma, because notice requirement was not a prerequisite to a claim in contract against District of Columbia and inmate claimed to be third-party beneficiary of the contract between Department of Corrections (DOC) and university under which college program was conducted; if inmate completed program's requirements and earned diploma, then university breached its contract with DOC by denying him the degree. D.C. Code 1981, § 12-309. *Ibrahim v. University of the District of Columbia*, 742 A.2d 879, 1999 D.C. App. LEXIS 294 (1999).

Subcontractor's claim against District of Columbia under Little Miller Act, based on theory that District failed to require general contractor to post performance bond, was for unliquidated, rather than liquidated damages, making statutory notice requirements for claims against District applicable; although amount of performance bond was known, damages claimed by subcontractor caused by contractor's failure to pay varied throughout course of litigation. D.C. Code 1981, §§ 1-1104, 12-309.

District of Columbia v. Campbell, 580 A.2d 1295, 1990 D.C. App. LEXIS 238 (1990).

Statutory notice requirements for filing claims against District of Columbia did not apply to subcontractor's contract claim against District based on District's failure to require general contractor to post payment bond, as required by Little Miller Act. D.C. Code 1981, §§ 1-1104, 12-309. District of Columbia v. Campbell, 580 A.2d 1295, 1990 D.C. App. LEXIS 238 (1990).

Statutory notice requirements for filing claims against District of Columbia applies only to action sounding in tort. D.C. Code 1981, § 12-309. District of Columbia v. Campbell, 580 A.2d 1295, 1990 D.C. App. LEXIS 238 (1990).

Claims for injunctive relief are properly directed at public officials, while claims for damages must be filed against the District of Columbia if District funds are to be reached. D.C. Code SCR, Civil Rules 8(f), 15(a, c); D.C. Code § 12-309. Keith v. Washington, 401 A.2d 468, 1979 D.C. App. LEXIS 348 (1979).

District six-month notice of claim statute applied to intentional torts. D.C. Code § 12-309. Breen v. District of Columbia, 400 A.2d 1058, 1979 D.C. App. LEXIS 349 (1979).

If asserted liability of District of Columbia as lessee of building was based on conversion of property by District's servants by unlawful retention or initial taking upon termination of lease, such claim would be barred by failure of lessor to give timely notice to District of such claim. D.C. Code § 12-309. Shehyn v. District of Columbia, 392 A.2d 1008, 1978 D.C. App. LEXIS 326 (1978).

Statutory requirement of written notice before suit against District of Columbia for unliquidated damages must be met where claim arises out of tortious conduct from employees of District to which District, as superior, must respond. D.C. Code § 12-309. Shehyn v. District of Columbia, 392 A.2d 1008, 1978 D.C. App. LEXIS 326 (1978).

Statute requiring written notice before suit against District of Columbia for unliquidated damages to person or property is applicable where District itself is in breach of duty and, although necessarily aware of breach, District is not necessarily aware of injury produced by breach. D.C. Code § 12-309. Shehyn v. District of Columbia, 392 A.2d 1008, 1978 D.C. App. LEXIS 326 (1978).

Lessee of premises itself would have notice of failure to return property on premises to lessor, and thus lessor's claim against lessee for breach of contract of bailment or for removal of fixture from premises would not have been barred by statute requiring written notice to District of Columbia as lessee within six months of injury in order to commence action against District. D.C. Code § 12-309. Shehyn v.

District of Columbia, 392 A.2d 1008, 1978 D.C. App. LEXIS 326 (1978).

Actual notice.

Arrestee's § 1983 action against District of Columbia and certain police officers, based upon claims of excessive force in arrest, was not subject to dismissal for failure to comply with statutory six-month claim requirement; police had in hand completed "Arrestee's Injury or Illness Report and Request for Examination and Treatment" as of night of arrest, and shortly thereafter acquired witnesses' statements regarding officer's conduct, police report of arrest itself, and results of police department investigation finding officer guilty of using excessive force. 42 U.S.C. § 1983; D.C. Code 1981, § 12-309. James v. District of Columbia, 610 F. Supp. 1027, 1985 U.S. Dist. LEXIS 18958 (1985).

Knowledge that the District might have acquired about the medical malpractice case against doctor, clinic, radiologist, and radiologist's employer through its representation of doctor did not excuse radiologist, who filed third-party complaint against District, from compliance with the formal notice requirement of statute, which required notice to be given to the District within six months after an injury in all actions seeking unliquidated damages against District for damages to person or property. Chidel v. Hubbard, 840 A.2d 689, 2004 D.C. App. LEXIS 3 (2004).

Whether District of Columbia had actual notice of child's potential claim was not appropriate consideration under statute providing that action may not be maintained against District of Columbia unless written notice of injury is given to mayor. D.C. Code 1981, § 12-309. Doe by Fein v. District of Columbia, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

"Initial Home Visit Questionnaire" prepared by employee of the District of Columbia Childhood Lead Poisoning Prevention Program at time infant who resided in District public housing project was diagnosed as suffering from lead poisoning did not satisfy notice requirements of statute prohibiting suits against District unless it is notified of injury within six months of when it is sustained. D.C. Code 1981, § 12-309. Doe by Fein v. District of Columbia, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

District of Columbia, by failing to require general contractor to post payment bond in connection with renovation project, was not aware of both breach of duty and injury, as required to exempt subcontractor from statutory notice requirements when it filed claim against District under Little Miller Act; although District was aware that it did not require general contractor to post bond, it could not have been aware of injury to subcontractor occurring when general contractor failed to pay

it. D.C. Code 1981, §§ 1-1104, 12-309. *District of Columbia v. Campbell*, 580 A.2d 1295, 1990 D.C. App. LEXIS 238 (1990).

Administrative proceedings.

Where plaintiff, because of nature of his claim against District of Columbia, is obliged under exhaustion doctrine to present his grievance to appropriate authorities before bringing matter to court, plaintiff is under duty to provide appropriate government administrators with first opportunity to review and pass on his claim and, not until administrative processing is finally conducted, is matter ripe for judicial intervention; thus not until then does matter accrue so as to trigger duty to furnish timely notice of prospective litigation to the District of Columbia. D.C. Code § 12-309. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

Dismissed Federal City College employee was not precluded from maintaining action challenging dismissal on theory that he had failed to timely pursue his administrative remedies by waiting until after criminal charges against him had been dismissed before appealing his removal to the College and District of Columbia Board of Higher Education, where from very outset District authorities were alerted to circumstances behind employee's dispute with city, and employee, after indictment was dismissed, promptly pursued his administrative remedies and then furnished formal notice of his intention to take case to court. D.C. Code § 12-309. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

District of Columbia Board of Higher Education is not obligated to entertain appeals regardless of when they were taken, and, on the contrary, timeliness is important consideration in determining whether appeals should be entertained, thus, in instances where prejudice results, untimeliness excuses obligation to process appeal. D.C. Code § 12-309. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

Where delay in noting appeal to District of Columbia Board of Higher Education was kept to minimum by dismissed employee of Federal City College and was traceable to assertion of Fifth Amendment rights, uncertainty created by Board resolution giving employees right to appeal decisions removing them but not placing limitations on time within which appeals had to be taken would not be construed so as to deny employee chance to present his side of case on appeal, especially where subject to be aired was matter of enduring importance to employee. U.S. Const. Amend. 5; D.C. Code § 12-309. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

Class actions.

Class attorney could act as agent for all class

members and notice given to District of Columbia of claims on behalf of approximately 1,200 claimants by the class attorney was sufficient to comply with the notice statute. D.C. Code § 12-309. *Dellums v. Powell*, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S. Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

Complaint as notice.

Internal complaint to department of corrections, as employer, and complaint to Equal Employment Opportunity Commission (EEOC) did not constitute "notice" to District of Columbia, for purpose of statute which required notice of claim within six months of violation, and, consequently, corrections officer, as employee, could not bring negligent hiring or retention and intentional infliction of emotional distress claims against District of Columbia. *Jones v. District of Columbia*, 346 F.Supp.2d 25, 2004 U.S. Dist. LEXIS 23304 (2004), affirmed in part and reversed in part by, remanded by 429 F.3d 276, 368 U.S. App. D.C. 279, 2005 U.S. App. LEXIS 24523, 87 Empl. Prac. Dec. (CCH) P42144, 96 Fair Empl. Prac. Cas. (BNA) 1441 (2005).

Complaint itself does not satisfy notice requirements with regard to claim against District of Columbia; there must be sufficient notice before complaint is filed. D.C. Code 1981, § 12-309. *Powell v. District of Columbia*, 645 F. Supp. 66, 1986 U.S. Dist. LEXIS 20376 (1986).

Filing of subcontractor's complaint against District of Columbia under Little Miller Act did not satisfy statutory notice requirement for actions against the District. D.C. Code 1981, §§ 1-1104, 12-309. *District of Columbia v. Campbell*, 580 A.2d 1295, 1990 D.C. App. LEXIS 238 (1990).

Filing wrongful death complaint against city did not satisfy requirement that mayor be given written notice of injury within six months in order for survivors to have right of action against city, even though complaint was filed within six months of incident. D.C. Code 1981, § 12-309. *Campbell v. District of Columbia*, 568 A.2d 1076, 1990 D.C. App. LEXIS 6 (1990).

Assuming that complaint may serve as written notice to District of Columbia of claim for unliquidated damages against District under statute, notice by way of complaint cannot be "given" to District under statute until process has been served or District has received complaint by other means. D.C. Code § 12-309. *De Kine v. District of Columbia*, 422 A.2d 981, 1980 D.C. App. LEXIS 388 (1980).

Assuming that complaint filed by operators of business of horse-drawn carriages for hire against District of Columbia could serve as written notice of claims for unliquidated damages under statute providing six-month period

after injury or damage within which to provide written notice to District of claim, where injuries relating to alleged false arrest, unlawful seizure and detention of property, negligence, conspiracy, and abuse of process had not been sustained, if at all, after June 4, 1975, complaint filed on December 11, 1975, was untimely notice to District of such injury. D.C. Code § 12-309. *De Kine v. District of Columbia*, 422 A.2d 981, 1980 D.C. App. LEXIS 388 (1980).

For purposes of statute providing that action may not be maintained against District of Columbia for unliquidated damages unless claimant has given notice in writing to Commissioner of District of Columbia within six months after injury, service of plaintiff's first complaint upon four officials of the District of Columbia about seven months after the injury, coupled with superior court clerk's delay in processing plaintiff's motion to proceed in forma pauperis did not constitute substantial compliance with the notice requirement, since time period prescribed by statute is mandatory. D.C. Code § 12-309. *Eskridge v. Jackson*, 401 A.2d 986, 1979 D.C. App. LEXIS 361 (1979).

Where named defendants were members of a subsidiary and unsuable element of the District of Columbia's government and where it was not even clear that they were named in their official capacities, complaint failed to meet the strict standards for notice to the District and, therefore, complaint could not be treated as one naming the District as defendant. D.C. Code § 12-309. *Kelley v. Morris*, 400 A.2d 1045, 1979 D.C. App. LEXIS 343 (1979).

Construction and application.

Since this section is in derogation of the common law, it must be strictly construed. *Pitts v. District of Columbia*, App. D.C., 391 A.2d 803 (1978); *Washington v. District of Columbia*, App. D.C., 429 A.2d 1, 113 WLR 2633 (Super. Ct. 1985).

Because District of Columbia statute requiring notice prior to filing tort action against District constitutes a departure from the common law concept of sovereign immunity, the statute is to be strictly construed, even if the result precludes a claimant's demand for compensation. *Barnhardt v. District of Columbia*, 601 F.Supp.2d 324, 2009 U.S. Dist. LEXIS 19672 (2009), remanded by 425 Fed. Appx. 2, 2011 U.S. App. LEXIS 11462 (D.C. Cir. 2011).

Because of statute providing six-month period within which plaintiff must notify Mayor of claim against District of Columbia constitutes a departure from the common law concept of sovereign immunity, it is strictly construed. *Jones v. Ritter*, 587 F.Supp.2d 152, 2008 U.S. Dist. LEXIS 94383 (2008).

Because the District of Columbia notice statute constitutes a departure from the common

law concept of sovereign immunity, it is to be strictly construed against claimant, and compliance is mandatory. *Hall v. Lanier*, 583 F.Supp.2d 135, 2008 U.S. Dist. LEXIS 86719 (2008).

Statute waiving District of Columbia's sovereign immunity is strictly construed in favor of District of Columbia. *Ibrahim v. District of Columbia*, 539 F.Supp.2d 143, 2008 U.S. Dist. LEXIS 18575 (2008).

The content requirements of the notice given to the District of Columbia, in order to recover in suit against District, apart from the act of notice itself, are to be interpreted liberally, and in close cases courts are to resolve doubts in favor of finding compliance with the statute. *Mazloun v. D.C. Metro. Police Dep't*, 522 F.Supp.2d 24, 2007 U.S. Dist. LEXIS 81793 (2007).

Because it is in derogation of common law principle of sovereign immunity, District of Columbia notice of claim statute is to be construed narrowly against claimants. *Kennedy v. D.C. Gov't*, 519 F.Supp.2d 50, 2007 U.S. Dist. LEXIS 78203 (2007).

Statute requiring notice in writing within six months of event in order to maintain an action against the District of Columbia for unliquidated damages to person or property constituted a departure from the common law concept of sovereign immunity, and thus was to be strictly construed. *Cason v. D.C. Dep't of Corr.*, 477 F.Supp.2d 141, 2007 U.S. Dist. LEXIS 16500 (2007).

Because the statute governing actions against the District of Columbia for unliquidated damages is in derogation of the common law concept of sovereign immunity, it must be strictly construed in favor of the sovereign, i.e., against waiver of immunity. *Jones v. District of Columbia*, 346 F.Supp.2d 25, 2004 U.S. Dist. LEXIS 23304 (2004), affirmed in part and reversed in part by 429 F.3d 276, 368 U.S. App. D.C. 279, 2005 U.S. App. LEXIS 24523, 87 Empl. Prac. Dec. (CCH) P42144, 96 Fair Empl. Prac. Cas. (BNA) 1441 (2005).

Statute requiring advance and timely notice of an intent to assert claims against the District of Columbia represents a waiver of sovereign immunity; therefore, it is to be strictly construed and compliance with its notice requirement is mandatory. *Tibbs v. Williams*, 263 F.Supp.2d 39, 2003 U.S. Dist. LEXIS 8226 (2003).

Provision of District of Columbia law requiring notice of claims did not apply to alleged deprivations of constitutional rights in violation of §§ 1983. *Day v. D.C. Dep't of Consumer & Regulatory Affairs*, 191 F.Supp.2d 154, 2002 U.S. Dist. LEXIS 4907 (2002).

Statute precluding tort claim against District of Columbia unless timely written notice is given to mayor within six months of injury does

not apply to claims against private sector defendants. *Parker v. Grand Hyatt Hotel*, 124 F.Supp.2d 79, 2000 U.S. Dist. LEXIS 17024 (2000).

The statute requiring giving of notice of claim as prerequisite to maintenance of action against District of Columbia is in derogation of common law and must be strictly construed. D.C. Code § 12-309. *Boone v. District of Columbia*, 294 F. Supp. 1156, 1968 U.S. Dist. LEXIS 9981 (D.D.C.1968).

Statute, requiring claimants to provide notice of a claim against the District of Columbia for damages to persons or property within six months after an injury was sustained in order to maintain a subsequent action against the District, does not waive District's sovereign immunity if the required notice is given; instead compliance with the notice statute is a condition precedent which, if not met, will prevent the destruction of sovereign immunity, and a waiver of sovereign immunity must be found in some other source. *Tucci v. District of Columbia*, 956 A.2d 684, 2008 D.C. App. LEXIS 401 (2008).

Because it is in derogation of the common law principle of sovereign immunity, the statute requiring notice of claims against the District is to be construed narrowly against claimants. *Snowder v. District of Columbia*, 949 A.2d 590, 2008 D.C. App. LEXIS 261 (2008).

Because it is in derogation of the common law principle of sovereign immunity, statute prohibiting suits against District of Columbia unless District is notified of injury within six months is to be construed narrowly against claimants. *Brown v. District of Columbia*, 853 A.2d 733, 2004 D.C. App. LEXIS 385 (2004).

Strict compliance with the terms of notice statute, which requires notice to be given to the District within six months after an injury in all actions seeking unliquidated damages against District for damages to person or property, is mandatory as a prerequisite to filing suit against the District; the notice statute is construed narrowly against claimants because it is in derogation of the common law principle of sovereign immunity. *Chidel v. Hubbard*, 840 A.2d 689, 2004 D.C. App. LEXIS 3 (2004).

Statute governing actions against District of Columbia for unliquidated damages simply required Water and Sewer Authority (WASA) to comply with all of the laws, regulations, and other obligations applicable to other agencies and instrumentalities of the District of Columbia and did not require tenant to provide pre-suit notice to mayor, prior to bringing action against WASA for alleged negligence and breach of covenant of quiet enjoyment/private nuisance. *Dingwall v. D.C. Water & Sewer Auth.*, 800 A.2d 686, 2002 D.C. App. LEXIS 307 (2002).

Statute mandating that a person file notice with District of Columbia prior to filing suit against the District is to be construed narrowly against claimants. *Hubbard v. Chidel*, 790 A.2d 558, 2002 D.C. App. LEXIS 23 (2002), remanded by 840 A.2d 689, 2004 D.C. App. LEXIS 3 (D.C. 2004).

In a first-party complaint, "injury" under statute mandating that a person file notice with District of Columbia prior to filing suit against the District for damages resulting from an alleged injury means at the time of the accident or damage to the plaintiff. *Hubbard v. Chidel*, 790 A.2d 558, 2002 D.C. App. LEXIS 23 (2002), remanded by 840 A.2d 689, 2004 D.C. App. LEXIS 3 (D.C. 2004).

Wrongful termination claim by correctional officer employed by District of Columbia's Department of Corrections (DOC) was a claim for "unliquidated damages," within meaning of statute requiring notice of claim against the District for unliquidated damages; the damages were not an easily ascertainable sum certain. *Beeton v. District of Columbia*, 779 A.2d 918, 2001 D.C. App. LEXIS 191 (2001).

Statute prohibiting suits against District of Columbia unless District is notified within six months of the damage or injury is construed narrowly against claimants. *George v. Dade*, 769 A.2d 760, 2001 D.C. App. LEXIS 77 (2001).

Because it is in derogation of the common law principle of sovereign immunity, notice statute governing claims against the District of Columbia is to be construed narrowly against claimants. *District of Columbia v. Arnold & Porter*, 756 A.2d 427, 2000 D.C. App. LEXIS 173 (2000).

Because it is in derogation of the common law principle of sovereign immunity, statute requiring giving notice of claim against District within six months of injury must be construed narrowly against claimants. D.C. Code 1981, § 12-309. *Gross v. District of Columbia*, 734 A.2d 1077, 1999 D.C. App. LEXIS 156 (1999).

Because it is in derogation of common-law principle of sovereign immunity, statute providing that action may not be maintained against District of Columbia unless written notice is given to mayor within six months after injury was sustained is to be construed narrowly against claimants. D.C. Code 1981, § 12-309. *Doe by Fein v. District of Columbia*, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

Statute setting forth presuit notice requirements for persons considering personal injury or property damage claim against District of Columbia is strictly construed insofar as concerns the requirement that notice be given, and within the time specified, and to the proper officers; but regarding adequacy of the content of notice, including approximate time of injury, the rule of liberal construction applies, and in close classes Court of Appeals resolves doubts

in favor of finding compliance with statute. D.C. Code 1981, § 12-309. *Wharton v. District of Columbia*, 666 A.2d 1227, 1995 D.C. App. LEXIS 276 (1995).

Since statute governing notice to mayor of possible litigation against the District of Columbia is in derogation of common law, it is to be strictly construed. D.C. Code § 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

This section does not apply to actions against University of District of Columbia's Board of Trustees. *Downs v. Board of Trustees*, 112 WLR 493 (Super. Ct. 1984).

This section does not preclude actions for rent abatements based on housing code violations raised as counterclaims to repossession actions initiated by the District government. *District of Columbia v. Daniel*, 111 WLR 621 (Super. Ct. 1983).

Construction with other laws.

Discharged school teacher's failure to respond to defendant's arguments on motion to dismiss that District of Columbia Comprehensive Merit Personnel Act (CMPA) provided exclusive remedy for any claim regarding retirement benefits, and that teacher failed to comply with mandatory notice requirements of CMPA prior to seeking damages for loss of retirement benefits, amounted to concession in action alleging defendant violated ADEA by terminating her employment as special education teacher with District of Columbia Public Schools (DCPS) on the basis of her age, where teacher's opposition failed to address either of District's arguments. *Kone v. District of Columbia*, 808 F.Supp.2d 80, 2011 U.S. Dist. LEXIS 97660 (2011).

Notice statute waiving District of Columbia's sovereign immunity does not limit waiver of sovereign immunity for constitutional torts covered by §§ 1983. *Ibrahim v. District of Columbia*, 539 F.Supp.2d 143, 2008 U.S. Dist. LEXIS 18575 (2008).

District of Columbia's mandatory notice statute applied to District of Columbia Human Rights Act (DCHRA) claims to the extent they sought unliquidated damages, but did not apply to DCHRA claims seeking equitable relief. *Byrd v. District of Columbia*, 538 F.Supp.2d 170, 2008 U.S. Dist. LEXIS 19118 (2008).

Complaint summary report created by District of Columbia police department after Lebanese nightclub patron complained of mistreatment in incident at nightclub with off-duty police officers provided notice of patron's potential claim under District of Columbia Human Rights Act (DCHRA), as required for patron to bring DCHRA action against District, although report did not make mention of patron's race or national origin; other documents including factual findings of police department's office of

professional responsibility contained references to alleged discriminatory comments made by one officer. *Mazloun v. D.C. Metro. Police Dept.*, 522 F.Supp.2d 24, 2007 U.S. Dist. LEXIS 81793 (2007).

Because one of the chief purposes of statute requiring that in order to maintain action against District of Columbia, written notice of approximate time, place, cause and circumstances of injury or damage serving as basis for action be provided to Mayor of District within six months after its occurrence is to provide timely notice of unliquidated damages claims against the District and because such damages are authorized under District of Columbia Human Rights Act (DCHRA), it is appropriate to subject DCHRA claims to the demands of that statute. *Kennedy v. D.C. Gov't*, 519 F.Supp.2d 50, 2007 U.S. Dist. LEXIS 78203 (2007).

Contents of notice.

— Cause and circumstances, contents of notice.

Failure to state cause and circumstances of injury is fatal under statute requiring claimant who alleges injury by District of Columbia to give notice of time, place, cause, and circumstances of injury within six months of injury. D.C. Code 1981, § 12-309. *Kirkland v. District of Columbia*, 70 F.3d 629, 1995 U.S. App. LEXIS 33697 (C.A.D.C. 1995).

Under "cause" element of statute requiring claimant who alleges injury by District of Columbia to give notice of time, place, cause, and circumstances of injury within six months of injury, written notice must disclose both factual cause of injury and reasonable basis for anticipating legal action as consequence. D.C. Code 1981, § 12-309. *Kirkland v. District of Columbia*, 70 F.3d 629, 1995 U.S. App. LEXIS 33697 (C.A.D.C. 1995).

Under "circumstances" element of statute requiring claimant who alleges injury by District of Columbia to give notice of time, place, cause, and circumstances of injury within six months of injury, circumstances must be detailed enough for District to conduct prompt, properly focused investigation of claim. D.C. Code 1981, § 12-309. *Kirkland v. District of Columbia*, 70 F.3d 629, 1995 U.S. App. LEXIS 33697 (C.A.D.C. 1995).

Cause element for report written by Metropolitan Police Department (MPD) to satisfy statutory notice requirement requires that written notice or police report disclose both factual cause of injury and reasonable basis for anticipating legal action as consequence, and even if report does not assert right to recovery, it will suffice if it describes injuring event with sufficient detail to reveal, in itself, basis for District's potential liability; circumstances prong is satisfied if there is enough information

for District to conduct prompt, properly focused investigation of claim. *Jones v. District of Columbia*, 2012 WL 3024970 (2012).

Under statute which provides that in order for an action to be maintained against District of Columbia, a claimant, within six months of the injury, must give written notice of "the approximate time, place, cause, and circumstances of the injury or damage," requirement of notice of the "cause and circumstances" are satisfied if the notice either characterized the injury and asserted the right to recover, or, without asserting a claim, described injuring event with sufficient detail to reveal, in itself, a basis for District's potential liability, and if the circumstances are detailed enough for District to conduct a prompt, properly focused investigation of claim. D.C. Code § 12-309. *Washington v. District of Columbia*, 429 A.2d 1362, 1981 D.C. App. LEXIS 261 (1981).

Under statute which requires that in order for an action to be maintained against District of Columbia, a claimant, within six months of the injury, must give written notice of "the approximate time, place, cause, and circumstances of the injury or damage," letter sent from plaintiff's attorney to District which revealed that plaintiff had suffered a fall in a building owned by District at a specified address, that plaintiff had sustained a broken leg and was treated at specified hospitals, and that referred to fact that plaintiff had retained counsel to write to District to pursue "losses sustained by her" satisfied requirement of written notice of the "cause and circumstances" of plaintiff's injury. D.C. Code § 12-309. *Washington v. District of Columbia*, 429 A.2d 1362, 1981 D.C. App. LEXIS 261 (1981).

— In general.

Motion to amend prior ruling barring District of Columbia Whistleblower Protection Act (WPA) claims on basis of "other reason that justifies relief," over 13 months after amendment to eliminate pre-suit notice provision became effective, had been brought within reasonable time, since parties were still in discovery and defendants had not claimed that they were prejudiced by reinstatement of plaintiffs' claims. *Bowyer v. District of Columbia*, 779 F.Supp.2d 159, 2011 U.S. Dist. LEXIS 46105 (2011).

Reinstatement of previously barred claims under District of Columbia Whistleblower Protection Act (WPA), after elimination of pre-suit notice provision, was necessary to accomplish justice, on motion to amend prior ruling on basis of "other reason that justifies relief," particularly given that plaintiffs' remaining WPA claims were still pending, parties had yet to conclude discovery, and District of Columbia Council had indicated that elimination of pre-suit notice requirement for WPA claims was

intended to facilitate such claims. *Bowyer v. District of Columbia*, 779 F.Supp.2d 159, 2011 U.S. Dist. LEXIS 46105 (2011).

Elimination of pre-suit notice provision through District of Columbia Whistleblower Protection Amendment Act was procedural change that had to be applied to pending actions and claims under Whistleblower Protection Act (WPA), since amendment did not enlarge scope of cause of action, alter District's responsibilities, or increase District's liability; although waivers of sovereign immunity had to be clearly expressed, District waived such immunity when it first enacted WPA. *Bowyer v. District of Columbia*, 779 F.Supp.2d 159, 2011 U.S. Dist. LEXIS 46105 (2011).

Under District of Columbia law, employee with District of Columbia Metropolitan Police Department (MPD) was required to give notice to Mayor of approximate time, place, cause, and circumstances of injury or damage within six months of his injury, and prior to filing suit, in order to maintain intentional infliction of emotional distress (IIED) claim. *McGee v. District of Columbia*, 646 F.Supp.2d 115, 2009 U.S. Dist. LEXIS 74572 (2009).

In order for District of Columbia police report to qualify as actual notice to District of potential tort plaintiff's claim, report must contain information as to time, place, cause and circumstances of injury or damage with at least the same degree of specificity required of written notice of claim, and must also provide the requisite information with enough particularity that it could be reasonably anticipated that a claim against the District might arise. *Clark v. Estate of Flach*, 604 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 25483 (2009).

A potential litigant against District of Columbia must provide an early warning to District of Columbia officials regarding litigation likely to occur in the future. *Jones v. Ritter*, 587 F.Supp.2d 152, 2008 U.S. Dist. LEXIS 94383 (2008).

Compliance with the District of Columbia Human Rights Act's notice requirement is mandatory and a prerequisite to filing a suit against the District of Columbia, because it represents a waiver of sovereign immunity. *Johnson v. District of Columbia*, 572 F.Supp.2d 94, 2008 U.S. Dist. LEXIS 63934 (2008).

To satisfy requirements of District of Columbia notice of claim statute, individual's written notice must disclose both factual cause of injury and a reasonable basis for anticipating legal action as a consequence. *Kennedy v. D.C. Gov't*, 519 F.Supp.2d 50, 2007 U.S. Dist. LEXIS 78203 (2007).

District of Columbia police officer's letter alleging intentional infliction of emotional distress and other torts and submitted to police chief, District's corporation counsel, and other individuals, but not to mayor, did not satisfy

requirements of statute requiring notice to mayor of possible litigation. *Brown v. District of Columbia*, 251 F.Supp.2d 152, 2003 U.S. Dist. LEXIS 3570 (2003).

A plaintiff bringing claims under the District of Columbia Human Rights Act (DCHRA) for unliquidated damages is not excused from providing prior notice of the claims pursuant to the District of Columbia municipal notice statute. *Giardino v. District of Columbia*, 252 F.R.D. 18, 2008 U.S. Dist. LEXIS 62499 (2008).

Compliance with the statutory notice requirement is mandatory in order for a claimant to maintain an action against the District of Columbia. *Tucci v. District of Columbia*, 956 A.2d 684, 2008 D.C. App. LEXIS 401 (2008).

Statutory content requirements for written notice which must be given to District of Columbia in order to maintain suit against District are to be interpreted liberally, and in close cases, doubts are resolved in favor of compliance. D.C. Code 1981, § 12-309. *Doe by Fein v. District of Columbia*, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

Statute requiring notice of injury or damage within six months for suit to be maintained against District of Columbia would be construed to limit inquiry into compliance with statutory notice requirement to adequacy of information furnished in notice. D.C. Code 1981, § 12-309. *Gaskins v. District of Columbia*, 579 A.2d 719, 1990 D.C. App. LEXIS 211 (1990).

— Injury or damage, contents of notice.

Notice of claim given to District of Columbia was fatally defective where notice failed to apprise District of identity of claimant, namely wife of injured person, and notice did not advise District of circumstances of injury, namely loss of consortium. D.C. Code § 12-309. *Boone v. District of Columbia*, 294 F. Supp. 1156, 1968 U.S. Dist. LEXIS 9981 (D.D.C.1968).

Police reports which recited time, place, cause, and circumstances of child's injuries, but did not suggest any failure by Department of Human Services (DHS) to intervene and take child out of what it suspected was abusive home environment did not satisfy presuit notice requirement for action against District of Columbia; relevant injury was not physical harm that child suffered from her burns, but District's alleged failure to intervene and take custody of child before she received those burns. D.C. Code 1981, § 12-309. *Doe by Fein v. District of Columbia*, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

Spouse need not specifically assert a claim for loss of consortium when the injured spouse duly notifies the mayor of the District of Columbia of his or her claim and the details of the accident. D.C. Code 1981, § 12-309. *Romer v.*

District of Columbia, 449 A.2d 1097, 1982 D.C. App. LEXIS 428 (1982).

Wife's claim for loss of consortium was not barred by lack of adequate notice to the District of Columbia, where the District had adequate notice of her husband's claim for back injuries. D.C. Code 1981, § 12-309. *Romer v. District of Columbia*, 449 A.2d 1097, 1982 D.C. App. LEXIS 428 (1982).

— Specificity and completeness, contents of notice.

Letter sent by inmate to District of Columbia mayor, although clearly intended to constitute notice of inmate's upcoming lawsuit stemming from an injury to his eye, was defective for purposes of statute requiring notice in writing within six months of event in order to maintain an action against the District, since letter failed to state the place, cause and circumstances of his injury. *Cason v. D.C. Dep't of Corr.*, 477 F.Supp.2d 141, 2007 U.S. Dist. LEXIS 16500 (2007).

Written notice of injury which is precondition to suit against District of Columbia is sufficient if it recites facts from which it could be reasonably anticipated that claim against District might arise; notice is sufficient if it describes injuring event with sufficient detail to reveal, in itself, basis for District's potential liability. D.C. Code 1981, § 12-309. *Doe by Fein v. District of Columbia*, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

Specificity requirement with respect to written notice of injury which must be given to mayor of District of Columbia before suit can be maintained against District is rooted in notion that to require any less would place intolerable investigative burden on District. D.C. Code 1981, § 12-309. *Doe by Fein v. District of Columbia*, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

Presuit notice to District of Columbia from person considering personal injury or property damage claim against District need only furnish a reasonable guide for inspection and provide an early warning to District officials regarding litigation likely to occur in the future; "reasonable guide" standard tolerates inaccuracies or lack of precision in notice that do not affect its basic adequacy to permit a prompt and focused investigation. D.C. Code 1981, § 12-309. *Wharton v. District of Columbia*, 666 A.2d 1227, 1995 D.C. App. LEXIS 276 (1995).

Statute setting forth notice requirements for persons considering a personal injury or property damage claim against District of Columbia was not intended to require notice complete enough to state formal cause of action. D.C. Code 1981, § 12-309. *Wharton v. District of Columbia*, 666 A.2d 1227, 1995 D.C. App. LEXIS 276 (1995).

With respect to details of statement giving notice, precise exactness is not absolutely essential in notice under statute governing notice to mayor of possible litigation against the District of Columbia. D.C. Code § 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

— **Sufficiency generally, contents of notice.**

While lesbian officers' reports filed with Metropolitan Police Department (MPD), MPD Medical Service Division memoranda written in response to reports, and Internal Affairs Division (IAD) investigative records created in response to officers' internal EEO complaints qualified as reports "in regular course of duty," content of those reports did not, individually or collectively, provide sufficient notice to Mayor of cause or circumstances underlying claims for unliquidated damages under District of Columbia Human Rights Act (DCHRA) based on sex discrimination and sexual orientation discrimination regarding officer's nonpromotion; however, officers could still seek liquidated damages, including back pay, under those counts. *Jones v. District of Columbia*, 2012 WL 3024970 (2012).

Detective's notice letter to District of Columbia (D.C.) did not provide D.C. with reasonable basis that she intended to pursue defamation, malicious prosecution, intentional infliction of emotional distress and conspiracy to commit tortious acts causes of action under D.C. law against D.C., where notice did not set forth time, place, cause and circumstances of claims. *Bonaccorsy v. District of Columbia*, 685 F.Supp.2d 18, 2010 U.S. Dist. LEXIS 12636 (2010).

District of Columbia high school principal gave notice of her intention to file claim as required by statute requiring written notice within six months of event in order to maintain action for unliquidated damages against District; principal's letter clearly warned District officials that litigation was likely to occur in the future, and District had sufficient time to conduct early investigation of facts and circumstances surrounding her claims. *Musgrove v. Dist. of Columbia*, 602 F.Supp.2d 141, 2009 U.S. Dist. LEXIS 20920 (2009), vacated in part by 775 F. Supp. 2d 158, 2011 U.S. Dist. LEXIS 37828, 111 Fair Empl. Prac. Cas. (BNA) 1847 (D.D.C. 2011).

District of Columbia police report, along with transit authority's letter explaining the circumstances in which District faced potential claim by personal representative for deadly collision between pedestrian and bus, were sufficient to place District on notice of personal representative's negligence claim against city, arising out of alleged defects in design or maintenance of no left turn traffic signs at subject location;

police report and letter gave no doubt that personal representative could potentially file a claim against the District, as the police report identified the approximate time and place of the incident, and transit authority's letter explained the circumstances in which the District faced a potential claim. *Sperling v. Wash. Metro. Area Transit Auth.*, 542 F.Supp.2d 76, 2008 U.S. Dist. LEXIS 27522 (2008).

District of Columbia employee's letter to a mayor describing an official's public statements and the end of the employee's employment, and asserting that the "public bashing" was causing him problems in obtaining other employment, was sufficient to notify the District of its potential liability, for purposes of a notice of claim statute. *Evans v. District of Columbia*, 391 F.Supp.2d 160, 2005 U.S. Dist. LEXIS 21088 (2005).

Under District of Columbia law, notice under Tort Claims Act need only furnish reasonable guide for inspection and provide early warning to District of Columbia officials regarding litigation likely to occur in future. *Jacqueline R. v. District of Columbia*, 370 F.Supp.2d 267, 2005 U.S. Dist. LEXIS 9172 (2005).

Business owner's undated letter to mayor of District of Columbia through his counsel, giving notice of his intent to assert claims arising out of assault, negligence, theft and intentional infliction of emotional distress because agents of the District physically entered his premises and unlawfully seized and removed personal effects, which letter also contained a list of items removed with a dollar value for each, was sufficient to put District of Columbia on notice of business owner's allegations of tortious interference with customer relations, as required by statute. *Tibbs v. Williams*, 263 F.Supp.2d 39, 2003 U.S. Dist. LEXIS 8226 (2003).

Letter from plaintiff to District of Columbia notifying District of plaintiff's false arrest claim but not revealing factual cause of injury he suffered did not satisfy notice requirement under District statute, nor was such requirement satisfied by police arrest report, so that false arrest claim and remaining common law claims plaintiff raised against District, including assault and battery and defamation, were barred for lack of notice, where letter made no mention of circumstances of plaintiff's injuries and failed to characterize injuries or describe injuring events, and where police report did not actually notify District of injury claimed. D.C. Code 1981, § 12-309. *Powell v. District of Columbia*, 645 F. Supp. 66, 1986 U.S. Dist. LEXIS 20376 (1986).

Former employee who sought nonliquidated damages for pain and suffering in disability discrimination claims against District of Columbia (DC) under DC's Human Rights Act (HRA) was not relieved from HRA's notice requirements on basis that he named the Public

Service Commission (PSC), for which he had worked as pipeline safety engineer, as a defendant; Congress had not created the PSC as an entity separate and apart from the DC government or given the PSC the general power to sue or be sued in its own name. *Jaiyeola v. District of Columbia*, 40 A.3d 356, 2012 D.C. App. LEXIS 135 (2012).

Letter from motorist to Mayor of District of Columbia, indicating that motorist intended to file false arrest claim against District in connection with his arrest in traffic incident, along with police report of arrest, provided sufficient notice to satisfy statutory requirement that notice be given within six months after injury was sustained to permit suit against District. *Enders v. District of Columbia*, 4 A.3d 457, 2010 D.C. App. LEXIS 547 (2010).

Notice of claim against the District, by two vehicle owners who alleged damages arising from costs of towing and storing vehicles without adequate notice, was not sufficient to give the District statutorily required notice of claims of other named parties to the lawsuit, where neither notice mentioned the claims of others. *Snowder v. District of Columbia*, 949 A.2d 590, 2008 D.C. App. LEXIS 261 (2008).

Vehicle owners' stolen vehicle police reports did not provide sufficient notice of their intent to sue the District for damages arising from costs of towing and storage of their vehicles without adequate notice, as required under the notice of claim statute; the injury detailed in the reports was not the injury complained of in the lawsuit, and the reports did not establish a reasonable basis for anticipating legal action. *Snowder v. District of Columbia*, 949 A.2d 590, 2008 D.C. App. LEXIS 261 (2008).

Radiologist's employer's notice to District, under statute that required notice to be given to the District within six months after an injury in all actions seeking unliquidated damages against District for damages to person or property, was insufficient to permit a claim regarding the District's alleged negligent operation of clinic, where notice made absolutely no mention of the District's alleged negligent operation of clinic, but rather stated that liability in medical malpractice suit rested with doctor employed by clinic that was operated by District. *Chidel v. Hubbard*, 840 A.2d 689, 2004 D.C. App. LEXIS 3 (2004).

Although the content requirements of a notice under statute, which requires notice to be given to the District within six months after an injury in all actions seeking unliquidated damages against District for damages to person or property, are to be interpreted liberally, the notice must be specific with respect to the cause and circumstances of the injury; to be sufficient, the notice must describe the injuring event with sufficient detail to reveal, in itself, a basis for the District's potential liability. *Chidel v.*

Hubbard, 840 A.2d 689, 2004 D.C. App. LEXIS 3 (2004).

Presuit notice to District of Columbia from person considering personal injury or property damage claim against District is sufficient if District, in the exercise of due diligence, should have been able to locate the offending defect. D.C. Code 1981, § 12-309. *Wharton v. District of Columbia*, 666 A.2d 1227, 1995 D.C. App. LEXIS 276 (1995).

Purposes of statute setting forth notice requirements for persons considering personal injury or property damage claim against District of Columbia focus on fairness to the District, not on technical perfection; claimants should not be deprived of their day in court by an unreasonably technical and burdensome application of the statute, so long as notice is timely served on a proper official and is drafted with sufficient detail to accord District a fair and reasonable opportunity to make a sufficient investigation. D.C. Code 1981, § 12-309. *Wharton v. District of Columbia*, 666 A.2d 1227, 1995 D.C. App. LEXIS 276 (1995).

Letter notifying Mayor of personal injuries before commencing personal injury suit against District of Columbia must provide enough information that District may locate offending defect by exercising due diligence. D.C. Code 1981, § 12-309. *Hardy v. District of Columbia*, 616 A.2d 338, 1992 D.C. App. LEXIS 289 (1992).

Counsel's letter to mayor of District of Columbia that his client was making claim against District for unliquidated damages as result of accident occurring at District of Columbia jail in Lorton, Virginia, on or about March 7, 1984, did not satisfy mandatory notice requirements for tort claims against District; date was uncertain, place was uncertain, District of Columbia jail was not located in Lorton, Virginia, and there were seven correctional facilities in Lorton, and it was unclear whether client was inmate, employee or visitor, nor did letter give any notice of cause and circumstances of injury or damage or nature of injury or damage. D.C. Code 1981, § 12-309. *Winters v. District of Columbia*, 595 A.2d 960, 1991 D.C. App. LEXIS 222 (1991).

Plaintiff's pro se complaint did not satisfy mandatory notice requirements for tort claims against District of Columbia, where complaint alleged that plaintiff had been injured in arts and craft shop at Lorton Reformatory on March 7, 1984, when he cut two fingers while operating table saw without safeguard in absence of supervisor. D.C. Code 1981, § 12-309. *Winters v. District of Columbia*, 595 A.2d 960, 1991 D.C. App. LEXIS 222 (1991).

Letter from injured pedestrian's attorney which gave pedestrian's home address and stated that on particular evening pedestrian was going to mailbox located at particular in-

tersection, tripped over eroded section of sidewalk on particular street, fell, and broke her arm provided sufficient notice to satisfy statutory requirement that notice be given within six months after injury was sustained to permit suit against the District of Columbia. D.C. Code 1981, § 12-309. *Gaskins v. District of Columbia*, 579 A.2d 719, 1990 D.C. App. LEXIS 211 (1990).

Claimant's letter, declaring that it was serving as notice that suit will be filed against District for arrest and prosecution of claimant, which indicated date that claimant was acquitted of charge, was sufficient to give notice to District that claimant's claim for malicious prosecution was forthcoming. D.C. Code 1981, § 12-309; Civil Rule 54(b); Court of Appeals Rule 4(a). *Allen v. District of Columbia*, 533 A.2d 1259, 1987 D.C. App. LEXIS 500 (1987).

Where letter giving notice of claim for damages against District of Columbia contained no mention of "approximate time" or "place" or "circumstances" of alleged pattern and practice of unlawful interference with business affairs of operator's horse-drawn carriages business, as required by statute, letter did not constitute adequate or timely notice of claim. D.C. Code § 12-309. *De Kine v. District of Columbia*, 422 A.2d 981, 1980 D.C. App. LEXIS 388 (1980).

Former district employee's letter complaining of racial discrimination in his discharge, from which libel claim arose, was insufficient to notify district that former employee was contemplating libel suit so as to satisfy notice of claim requirement. D.C. Code § 12-309. *Breen v. District of Columbia*, 400 A.2d 1058, 1979 D.C. App. LEXIS 349 (1979).

Contribution notice sent by radiologist's employer in timely manner to District of Columbia regarding patient's primary care physician, a District employee, was also sufficient as notice to District of claim that District's operation of clinic where patient was treated was negligent, where issue of clinic's negligence in failing to properly diagnose patient's breast cancer was in case from start, such that District had adequate notice of approximate time, place, cause, and circumstances of alleged injury. *Hubbard v. Chidel*, 131 WLR 425 (Super. Ct. 2003).

As result of determination that contribution notice sent by radiologist's employer to District of Columbia was sufficient as notice to District of claim that District's operation of clinic where patient was treated was negligent, radiologist's employer was entitled to pro rata contribution from other two tortfeasors, in determining extent of its liability for judgment in favor of patient. *Hubbard v. Chidel*, 131 WLR 425 (Super. Ct. 2003).

Report completed by motorists after automobile accident and submitted to the Department of Public Works was insufficient to provide the notice to District of Columbia required by statute governing actions against District for unliquidated damages; report was not submitted to mayor, was not a written report of the metropolitan police department, and, although it stated name, time, and location of accident and gave names of parties and alleged damage to their vehicles, did not indicate basis for District's liability. *Rodriguez v. Crowley*, 129 WLR 2453 (Super. Ct. 2001).

Plaintiff's notice to the District of Columbia as required by this section was deficient and invalid because her letter of notice stated that counsel was retained to represent her relative to claims against hospital and individual as a result of an involuntary hospitalization proceeding that was taken against her beginning on or about a certain date. This was an allegation and did not furnish factual details of what wrongful actions occurred. *Magwood v. Giddings*, 122 WLR 241 (Super. Ct. 1993).

Plaintiff's notice to the District of Columbia as required by this section was deficient and invalid because her letter of notice stated that counsel was retained to represent her relative to claims against hospital and individual as a result of an involuntary hospitalization proceeding that was taken against her beginning on or about a certain date. This was an allegation and did not furnish factual details of what wrongful actions occurred. *Magwood v. Giddings*, 122 WLR 241 (Super. Ct. 1993).

— Time and place, contents of notice.

Omitting place of alleged injury is fatal under statute requiring claimant who alleges injury by District of Columbia to give notice of time, place, cause, and circumstances of injury within six months of injury. D.C. Code 1981, § 12-309. *Kirkland v. District of Columbia*, 70 F.3d 629, 1995 U.S. App. LEXIS 33697 (C.A.D.C. 1995).

Purported notice to District of Columbia of pretrial detainee's claim against District for negligent hiring and supervision of police officers was inadequate, where letter gave neither approximate time nor place of injury, as required by statute. D.C. Code 1981, §§ 12-301, 12-301(4), 12-309. *Hunter v. District of Columbia*, 943 F.2d 69, 1991 U.S. App. LEXIS 20108 (C.A.D.C. 1991).

Discharged District of Columbia Office of Property Management (OPM) employee's letter to mayor informing District of his retaliation claims under District of Columbia Human Rights Act (DCHRA) arising from his non-selection for position as management analysis officer with OPM was insufficient to fulfill District's pre-suit notice requirement, since position was not filled until one week after employee sent letter, and at time letter was sent, employee still appeared on selection certificate for job. *Francis v. District of Columbia*, 731 F.Supp.2d 56, 2010 U.S. Dist. LEXIS 137113 (2010).

Arrestee's common law claims against the District of Columbia for malicious prosecution and intentional infliction of emotional distress were barred because arrestee failed to satisfy the statutory mandatory notice requirement for maintaining such claims against the District; although arrestee's attorney mailed a notice letter to the District of Columbia within the statutory notice period, the letter did not indicate the location of the incident underlying the

arrestee's claims. *Harris v. District of Columbia*, 696 F.Supp.2d 123, 2010 U.S. Dist. LEXIS 26704 (2010).

"Approximate time" requirement in statute setting forth notice requirements for persons considering a personal injury or property damage claim against District of Columbia means that a claimant must give District an approximate estimate of the time of the accident, not the precise hour of the day on which an injury is sustained. D.C. Code 1981, § 12-309. *Wharton v. District of Columbia*, 666 A.2d 1227, 1995 D.C. App. LEXIS 276 (1995).

Presuit notice to District of Columbia by person injured in fall at building owned by District was sufficient to serve statutory purposes of warning District of potential litigation and providing guide to further investigation, though notice contained a misdescription of the date of injury by one day and of the time by 12 hours, where it was sent well within statutory limit of six months from date of injury, thus affording District ample time to investigate before evidence was lost or witnesses became unavailable, and where it contained detailed description of the location and cause of accident such that District could inspect the premises at issue. D.C. Code 1981, § 12-309. *Wharton v. District of Columbia*, 666 A.2d 1227, 1995 D.C. App. LEXIS 276 (1995).

Identifying location of allegedly defective water meter cover which caused personal injury within 75 feet or less of actual location, by indicating correct block, side of street and nearby street address in letter to Mayor of District of Columbia provided sufficient notice of place of injury to satisfy statutory prerequisite to personal injury suit against District, particularly since letter did not contain any actual misstatement. D.C. Code 1981, § 12-309. *Hardy v. District of Columbia*, 616 A.2d 338, 1992 D.C. App. LEXIS 289 (1992).

Notice sent to mayor about accident in which pedestrian allegedly stepped into uncovered manhole did not satisfy requirement that notice provide "reasonable guide for inspection" where notice made no mention of place of injury. D.C. Code 1981, § 12-309. *Worthy v. District of Columbia*, 601 A.2d 581, 1991 D.C. App. LEXIS 358 (1991).

District of Columbia did not show that the date corresponding to a letter regarding miscalibrated breath-test machines that was sent on behalf of the attorney general was a date on which plaintiffs who had been charged with driving while intoxicated (DWI) knew or should have known that they were allegedly injured by the miscalibrated machines, and thus the date did not trigger the notice requirement of the statute prohibiting the maintenance of any action against the District of Columbia for unliquidated damages unless certain written notice was provided to the mayor

within six months after the injury was suffered, for purposes of the plaintiffs' negligence action against the District of Columbia, even though the letter included a list of affected arrestees and their respective case numbers; the letter was sent to a local voluntary bar association, and the bar association might or might not have included plaintiffs' counsel in their DWI cases. *Jones v. D.C.*, 139 WLR 2517 (Super. Ct. 2011).

Defenses.

It was not appropriate to strike defendants' defense, in response to plaintiff's claim that defendants unjustly imprisoned him in connection with wrongful conviction for rape and murder, that plaintiff might have failed to fully comply with mandatory notice requirements of District of Columbia law, as defendants were permitted to say in answer that they lacked knowledge or information sufficient to form belief about truth of plaintiff's allegation. *Gates v. District of Columbia*, 825 F.Supp.2d 168, 2011 U.S. Dist. LEXIS 133146 (2011).

Defendants in suit asserting claims under the District of Columbia Human Rights Act (DCHRA) for unliquidated damages did not waive municipal notice defense, where time between the filing of plaintiffs' complaint and first invocation of defense by the defendants was just barely over a year, and during that time there was minimal activity in the case and defendants underwent a change of counsel. *Giardino v. District of Columbia*, 252 F.R.D. 18, 2008 U.S. Dist. LEXIS 62499 (2008).

Dismissal.

Failure of plaintiffs to comply with District of Columbia municipal notice statute warranted dismissal of claims under the District of Columbia Human Rights Act (DCHRA) for unliquidated damages. *Giardino v. District of Columbia*, 252 F.R.D. 18, 2008 U.S. Dist. LEXIS 62499 (2008).

Federal claims.

In adopting notice of claims provision for the District of Columbia, Congress did not intend that it should burden federal causes of action any more than would an analogous state ordinance. D.C. Code 1981, § 12-309. *Brown v. United States*, 742 F.2d 1498, 1984 U.S. App. LEXIS 18969 (C.A.D.C. 1984), writ of certiorari denied by 471 U.S. 1073, 105 S. Ct. 2153, 85 L. Ed. 2d 509, 1985 U.S. LEXIS 1721, 53 U.S.L.W. 3777 (1985).

Noncompliance with notice of claim provision in the District of Columbia Code could not bar federal claims; overruling *McClam v. Barry* 697 F.2d 366. D.C. Code 1981, § 12-309. *Brown v. United States*, 742 F.2d 1498, 1984 U.S. App. LEXIS 18969 (C.A.D.C. 1984), writ of certiorari denied by 471 U.S. 1073, 105 S. Ct. 2153, 85 L.

Ed. 2d 509, 1985 U.S. LEXIS 1721, 53 U.S.L.W. 3777 (1985).

Affirmative defense, that prisoners' claims were barred for failure to comply with District of Columbia notice requirements, applied only to claims against District of Columbia, not against individual defendants, and it did not apply to constitutional or other federal claims. *Anderson-Bey v. District of Columbia*, 466 F.Supp.2d 51, 2006 U.S. Dist. LEXIS 88891 (2006).

Failure to comply with District of Columbia statute setting forth notice requirement for claims against District did not bar plaintiff's claim for damages on basis of allegation that District deprived plaintiff of constitutional rights in violation of section 1983. D.C. Code 1981, § 12-309; 42 U.S.C. § 1983. *Powell v. District of Columbia*, 645 F. Supp. 66, 1986 U.S. Dist. LEXIS 20376 (1986).

District of Columbia statute providing that certain actions may not be maintained against the District unless notice be given as specified in statute within six months of sustaining of injury or damage is applicable to actions brought in federal court for deprivation of constitutional rights, as well as to actions alleging common-law torts, and failure to make such notice within prescribed time period was bar to maintaining civil rights action against the District. D.C. Code 1981, § 12-309; 42 U.S.C. § 1983. *Osgood v. District of Columbia*, 567 F. Supp. 1026, 1983 U.S. Dist. LEXIS 15673 (1983).

Failure to comply with requirement of District of Columbia Code that written notice be given within six months of an occurrence before a damage action may be maintained against the District was no bar to federal damage suit against the District for alleged infringement of plaintiff's constitutional rights in connection with his arrest and detention by District police. D.C. Code § 12-309; U.S. Const. Amends. 1, 4, 5; 18 U.S.C. § 1331. *Lively v. Cullinane*, 451 F. Supp. 999, 1976 U.S. Dist. LEXIS 15652 (1976).

District of Columbia's notice-of-claim statute did not apply to action brought by plaintiff against District for allegedly selling plaintiff's car, which had been stolen and later recovered by police, without providing notice of the sale, since plaintiff pled a federal due process claim, not a common law negligence claim. *Candido v. District of Columbia*, 242 F.R.D. 151, 2007 U.S. Dist. LEXIS 45175 (2007).

Failure, if any, by prisoner to have provided to District of Columbia mayor's office a written notice of claim, which arose from alleged prison assault by Department of Corrections (DOC) guards, would be no bar to federal §§ 1983 claims in the District's courts. *Artis-Bey v. District of Columbia*, 884 A.2d 626, 2005 D.C. App. LEXIS 512 (2005).

Statutory notice of claim requirement does not apply to claims under § 1983. 42 U.S.C. § 1983; D.C. Code 1981, § 12-309. *Gross v. District of Columbia*, 734 A.2d 1077, 1999 D.C. App. LEXIS 156 (1999).

Inmate's Eighth Amendment claim brought under § 1983 was not subject to provision requiring service of written notice on mayor of District of Columbia within six months after injury was sustained, and could not be dismissed on grounds of failure to serve notice. 42 U.S.C. § 1983; U.S. Const. Amends. 8, 14; D.C. Code 1981, § 12-309. *Johnson-El v. District of Columbia*, 579 A.2d 163, 1990 D.C. App. LEXIS 178 (1990).

Federal courts generally.

Where federal action contains no statute of limitations courts ordinarily look to state law as a possible source of federal law. *Brown v. United States*, 742 F.2d 1498, 1984 U.S. App. LEXIS 18969 (C.A.D.C. 1984), writ of certiorari denied by 471 U.S. 1073, 105 S. Ct. 2153, 85 L. Ed. 2d 509, 1985 U.S. LEXIS 1721, 53 U.S.L.W. 3777 (1985).

Where it would be consistent with the federal policies underlying action, courts borrow the most appropriate state limitation provision. *Brown v. United States*, 742 F.2d 1498, 1984 U.S. App. LEXIS 18969 (C.A.D.C. 1984), writ of certiorari denied by 471 U.S. 1073, 105 S. Ct. 2153, 85 L. Ed. 2d 509, 1985 U.S. LEXIS 1721, 53 U.S.L.W. 3777 (1985).

Because practice of borrowing state statutes presupposes a need to fill a deficiency in federal scheme, a federal court must first look to see if there is indeed such a deficiency. *Brown v. United States*, 742 F.2d 1498, 1984 U.S. App. LEXIS 18969 (C.A.D.C. 1984), writ of certiorari denied by 471 U.S. 1073, 105 S. Ct. 2153, 85 L. Ed. 2d 509, 1985 U.S. LEXIS 1721, 53 U.S.L.W. 3777 (1985).

There was no deficiency in federal scheme that would lead federal court to look to notice of claims provision in the District of Columbia Code as possible source of federal law for effectuating federal policies. D.C. Code 1981, § 12-309. *Brown v. United States*, 742 F.2d 1498, 1984 U.S. App. LEXIS 18969 (C.A.D.C. 1984), writ of certiorari denied by 471 U.S. 1073, 105 S. Ct. 2153, 85 L. Ed. 2d 509, 1985 U.S. LEXIS 1721, 53 U.S.L.W. 3777 (1985).

Notice of claims provision in District of Columbia Code would not, in spite of its differences, be analogized to a local statute of limitations and thus be adopted as a federal rule of law. D.C. Code 1981, § 12-309. *Brown v. United States*, 742 F.2d 1498, 1984 U.S. App. LEXIS 18969 (C.A.D.C. 1984), writ of certiorari denied by 471 U.S. 1073, 105 S. Ct. 2153, 85 L. Ed. 2d 509, 1985 U.S. LEXIS 1721, 53 U.S.L.W. 3777 (1985).

There was no deficiency in federal scheme that would lead federal court to look to notice of claims provision in the District of Columbia Code as possible source of federal law for effectuating federal policies. D.C. Code 1981, § 12-309. *Brown v. United States*, 742 F.2d 1498, 1984 U.S. App. LEXIS 18969 (C.A.D.C. 1984), writ of certiorari denied by 471 U.S. 1073, 105 S. Ct. 2153, 85 L. Ed. 2d 509, 1985 U.S. LEXIS 1721, 53 U.S.L.W. 3777 (1985).

Notice of claims provision in District of Columbia Code would not, in spite of its differences, be analogized to a local statute of limitations and thus be adopted as a federal rule of law. D.C. Code 1981, § 12-309. *Brown v. United States*, 742 F.2d 1498, 1984 U.S. App. LEXIS 18969 (C.A.D.C. 1984), writ of certiorari denied by 471 U.S. 1073, 105 S. Ct. 2153, 85 L. Ed. 2d 509, 1985 U.S. LEXIS 1721, 53 U.S.L.W. 3777 (1985).

Limitation periods in diversity cases in United States District Court for the District of Columbia are fixed by District of Columbia law. *Foretich v. Glamour*, 741 F. Supp. 247, 1990 U.S. Dist. LEXIS 3544 (1990).

In general.

Statute subjecting all suits against the district to a six-month notice requirement could be interpreted as a statute of limitations. D.C. Code § 12-309. *Marshall v. District of Columbia Government*, 559 F.2d 726, 1977 U.S. App. LEXIS 13677 (C.A.D.C. 1977).

Statute requiring notice in writing within six months of event in order to maintain action against District of Columbia for unliquidated damages to person or property is condition precedent to filing suit against District of Columbia. *Musgrove v. Dist. of Columbia*, 602 F.Supp.2d 141, 2009 U.S. Dist. LEXIS 20920 (2009), vacated in part by 775 F. Supp. 2d 158, 2011 U.S. Dist. LEXIS 37828, 111 Fair Empl. Prac. Cas. (BNA) 1847 (D.D.C. 2011).

Compliance with terms of statute providing six-month period within which plaintiff must notify Mayor of claim against District of Columbia is a mandatory prerequisite to filing a tort claim against the District of Columbia. *Jones v. Ritter*, 587 F.Supp.2d 152, 2008 U.S. Dist. LEXIS 94383 (2008).

Public university employee's untimely notice of his claims to District of Columbia mayor did not satisfy District of Columbia Human Rights Act's notice requirement. *Johnson v. District of Columbia*, 572 F.Supp.2d 94, 2008 U.S. Dist. LEXIS 63934 (2008).

Compliance with statute requiring notice in writing within six months of event in order to maintain an action against the District of Columbia for unliquidated damages to person or property is mandatory. *Cason v. D.C. Dep't of Corr.*, 477 F.Supp.2d 141, 2007 U.S. Dist. LEXIS 16500 (2007).

Statute requiring giving notice of claim against District within six months of injury does not function as a statute of limitations. D.C. Code 1981, § 12-309. *Gross v. District of Columbia*, 734 A.2d 1077, 1999 D.C. App. LEXIS 156 (1999).

Statute prohibiting suits against District of Columbia unless District is notified of injury within six months of when it is sustained is not, and does not function as, statute of limitations. D.C. Code 1981, § 12-309. *District of Columbia v. Ross*, 697 A.2d 14, 1997 D.C. App. LEXIS 131 (1997).

Differences existing between governmental and private tort-feasors justified disparate treatment accorded private tort-feasors and those injured by governmental tort-feasors by statute requiring six months' notice of question as condition to maintenance of suit against District of Columbia for unliquidated damages to personal property. D.C. Code § 12-309; U.S. Const. Amends. 5, 14. *Wilson v. District of Columbia*, 338 A.2d 437, 1975 D.C. App. LEXIS 390 (1975).

Mandamus and other writs.

Mandamus would not issue to require federal district judge to vacate his order dismissing against District of Columbia action for damages for alleged unlawful arrests and detention of plaintiffs during 1971 May Day demonstrations on ground of failure to give notice of injuries sued for within six-month statutory period, despite claim that District was adequately informed of plaintiffs' alleged injuries by complaint in another lawsuit against District officials instituted on behalf of class which included plaintiffs, where district judge had no plainly defined and peremptory duty to permit continuation of plaintiff's action against District. D.C. Code §§ 1-131, 1-161(a), 12-309; 18 U.S.C. §§ 1291, 1651(a). *Knable v. Wilson*, 570 F.2d 957, 1977 U.S. App. LEXIS 5392 (C.A.D.C. 1977).

Manner of notice.

Notice to subordinate official did not take place of written notice to District of Columbia itself with respect to pretrial detainee's claim of negligent supervision of police officers. D.C. Code 1981, § 12-309. *Hunter v. District of Columbia*, 943 F.2d 69, 1991 U.S. App. LEXIS 20108 (C.A.D.C. 1991).

Under District of Columbia statute requiring written notice of personal injury claim within six months, effective notice can be given, without specific delegation, by one not the claimant, his agent or attorney where it is obvious that a claim is being made which sets forth the claimant's identity and the approximate time, place, cause and circumstances of the injury or damage and the District can show no resulting prejudice. D.C. Code § 12-309. *Smith v. District*

of Columbia, 463 F.2d 962, 1972 U.S. App. LEXIS 8778 (C.A.D.C. 1972).

Letter sent District of Columbia by a claims representative for landlord's insurer, which identified claimant-tenant, the approximate time of injury, the approximate place of injury, the approximate cause of the injury, and the approximate circumstances of the injury, substantially complied with District of Columbia statute requiring written notice of personal injury claim within six months, where there was no prejudice to the District, notwithstanding the District's claim that since notice did not emanate from claimant, his agent or attorney as required by statute, it was fatally defective. D.C. Code § 12-309. *Smith v. District of Columbia*, 463 F.2d 962, 1972 U.S. App. LEXIS 8778 (C.A.D.C. 1972).

Former District of Columbia employee did not provide notice to the mayor of her claims for unliquidated damages arising from alleged violations of the District of Columbia Human Rights Act (DCHRA) in her termination, as required by District of Columbia law, where employee sent letter to her department's Equal Employment Opportunity Commission (EEOC) office and to the District's Office of Human Rights (OHR) via the internet, but not in writing to the mayor. *Blocker-Burnette v. District of Columbia*, 730 F.Supp.2d 200, 2010 U.S. Dist. LEXIS 82893 (2010).

District of Columbia police officer's letter alleging intentional infliction of emotional distress and other torts and submitted to police chief, District's corporation counsel, and other individuals, but not to mayor, did not satisfy requirements of statute requiring notice to mayor of possible litigation. *Brown v. District of Columbia*, 251 F.Supp.2d 152, 2003 U.S. Dist. LEXIS 3570 (2003).

In accordance with statute requiring claimant to file notice with mayor prior to filing lawsuit seeking unliquidated damages against District of Columbia, wife of hotel restaurant patron who was arrested in connection with officers' attempt to remove him from restaurant was required to file notice with respect to her common-law claims of negligent supervision and intentional and negligent infliction of emotional distress; filing requirement was not satisfied by patron's notice. *Parker v. Grand Hyatt Hotel*, 124 F.Supp.2d 79, 2000 U.S. Dist. LEXIS 17024 (2000).

Police reports are only acceptable alternatives to formal notice which must be given to District of Columbia in order to maintain suit against District; court is not free to go beyond express language of statute and authorize any additional documents to meet statute's presuit notice requirements. D.C. Code 1981, § 12-309. *Doe by Fein v. District of Columbia*, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

Requirement that letter be sent to Mayor of District of Columbia notifying Mayor of injuries sustained in accident is prerequisite to filing personal injury suit against District. D.C. Code 1981, § 12-309. *Hardy v. District of Columbia*, 616 A.2d 338, 1992 D.C. App. LEXIS 289 (1992).

While precise exactness in regards to statute governing notice of action to be maintained against District of Columbia for unliquidated damages is not required, requirements of statute are nevertheless strictly construed. D.C. Code § 12-309. *Braxton v. National Capital Housing Authority*, 396 A.2d 215, 1978 D.C. App. LEXIS 584 (1978).

Mother's oral report of her child's injury to security guard assigned to building in public housing project in which she lived did not satisfy requirements of statute requiring notice to mayor of possible litigation against the District of Columbia. D.C. Code §§ 12-301, 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

Where tenant slipped and fell on icy sidewalk in front of her apartment and was injured, and landlord's insurer sent letter to District of Columbia within six months required by statute, informing District of accident and naming tenant and her attorney, and no claim was made that tenant authorized insurer to send letter on her behalf, and it seemed plain that insurer's purpose in sending letter was to shift any responsibility for accident from landlord to District, notice was not given to District by claimant, her agent, or attorney within meaning of District's statute requiring notice within six months. D.C. Code § 12-309. *District of Columbia v. Smith*, 271 A.2d 786, 1970 D.C. App. LEXIS 372 (App. 1970), reversed by 463 F.2d 962, 150 U.S. App. D.C. 126, 1972 U.S. App. LEXIS 8778 (1972).

Minors.

Although child may have been de facto abandoned by her mother, that fact did not warrant tolling of six-month limitations period for filing written notice of claim for damages against District of Columbia, despite fact that child was too young to file her own notice. D.C. Code 1981, § 12-309. *Doe by Fein v. District of Columbia*, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

Plaintiff, who filed his complaint against the District of Columbia over nine years after he was injured by fellow students in an altercation occurring on a playground of a local school, was not excused from statutory six-month notice requirement during period of his minority and, hence, minority did not toll statutory period within which plaintiff was required to comply with statutory notice requirement and, in absence of compliance, claim was barred. D.C. Code 1973, § 12-309. *Gwinn v. District of Co-*

lumbia, 434 A.2d 1376, 1981 D.C. App. LEXIS 354 (1981).

Unless timely notice of a claim for unliquidated damages is given to the District of Columbia, no "right of action" or "entitlement to maintain an action" accrues under statute authorizing maintenance of an action after removal of disability when a person entitled to maintain an action is under 18 years old at the time the right of action accrues. D.C. Code 1973, § 12-302. *Gwinn v. District of Columbia*, 434 A.2d 1376, 1981 D.C. App. LEXIS 354 (1981).

Plaintiff, who filed his complaint against the District of Columbia over nine years after he was injured by fellow students in an altercation occurring on a playground of a local school, was not excused from statutory six-month notice requirement during period of his minority and, hence, minority did not toll statutory period within which plaintiff was required to comply with statutory notice requirement and, in absence of compliance, claim was barred. D.C. Code 1973, § 12-309. *Gwinn v. District of Columbia*, 434 A.2d 1376, 1981 D.C. App. LEXIS 354 (1981).

Necessity of notice.

African-American members and officers of District of Columbia Fire and Emergency Medical Services (DCFEMS) were not exempt from statutory notice requirement for purposes of their claim for intentional infliction of emotional distress, a creation of D.C. common law. *Hamilton v. District of Columbia*, 852 F.Supp.2d 139, 2012 U.S. Dist. LEXIS 47808 (2012).

District of Columbia Fire and Emergency Medical Services (DCFEMS) sergeant's failure to provide notice of negligence claim to Mayor of District of Columbia would only bar unliquidated portion of damages he requested in complaint, i.e., those based on "emotional distress, pain, suffering and humiliation," and it did not bar his claim for lost wages, request for "declaratory and injunctive relief concerning the illegal nature of the policies and practices" at issue, and his request for award of attorney fees and litigation-related costs. *Lindsey v. District of Columbia*, 810 F.Supp.2d 189, 2011 U.S. Dist. LEXIS 103492 (2011).

While compliance with District of Columbia Code section requiring written notice to Mayor of District of Columbia within six months after injury or damage was sustained of approximate time, place, cause, and circumstances of injury or damages is mandatory prerequisite for filing suit against District for unliquidated damages, failure to give notice under that section does not bar claims for liquidated damages. *Lindsey v. District of Columbia*, 810 F.Supp.2d 189, 2011 U.S. Dist. LEXIS 103492 (2011).

Former District of Columbia employee's claims for reinstatement without a break in service, back pay and for an injunction in her action alleging her termination violated the District of Columbia Human Rights Act (DCHRA) were liquidated damages that did not require providing written notice of claim to the mayor's office under District of Columbia law. *Blocker-Burnette v. District of Columbia*, 730 F.Supp.2d 200, 2010 U.S. Dist. LEXIS 82893 (2010).

Disputes as to whether District of Columbia received actual notice of potential tort plaintiff's claims are an area where no bright line tests are applicable and courts must resolve them on a case-by-case basis. *Clark v. Estate of Flach*, 604 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 25483 (2009).

Compliance with requirement that potential tort plaintiffs give written notice to District of Columbia within six months of an injury in order to bring suit is mandatory and, because it is in derogation of the common law principle of sovereign immunity, it is construed narrowly against claimants. *Clark v. Estate of Flach*, 604 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 25483 (2009).

Purpose of requirement that potential tort plaintiffs give written notice to District of Columbia within six months of an injury in order to bring suit is to give reasonable notice to District so that the facts may be ascertained and, if possible, deserving claims adjusted and meritless claims resisted. *Clark v. Estate of Flach*, 604 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 25483 (2009).

District of Columbia did not have notice of claim alleging gross negligence by District's police officers and employees in pursuing stolen car at high speeds through crowded streets and in failing to properly hire, train, and control officers, which gross negligence allegedly resulted in injury to passenger when car crashed into vehicle in which passenger was riding, and thus passenger's claim against District would be dismissed, where passenger did not provide required written notice to District within six months of injury before bringing suit and police reports and event chronology created contemporaneously with accident failed to reveal basis for District's potential liability, as would have provided District with actual notice. *Clark v. Estate of Flach*, 604 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 25483 (2009).

Because courts are not at liberty to construe District of Columbia statute governing notice requirements for claims of unliquidated damages against the District other than according to its terms, or to depart from its clear requirements, notice is fatally defective if one or more of the statutory elements is lacking. *Hall v. Lanier*, 583 F.Supp.2d 135, 2008 U.S. Dist. LEXIS 86719 (2008).

Notice under statute waiving District of Columbia's sovereign immunity is a precondition to a common-law tort claim against District of Columbia. *Ibrahim v. District of Columbia*, 539 F.Supp.2d 143, 2008 U.S. Dist. LEXIS 18575 (2008).

Prisoner's admitted failure to send notice of his common-law tort claims to mayor of District of Columbia, as required by statute waiving District of Columbia's sovereign immunity, necessitated dismissal of prisoner's claims for negligence, medical malpractice, and intentional infliction of emotional distress. *Ibrahim v. District of Columbia*, 539 F.Supp.2d 143, 2008 U.S. Dist. LEXIS 18575 (2008).

Under District of Columbia law, fulfillment of requirements of notice of claim statute is condition precedent to any right of action or entitlement to maintain action for tort damages against District. *Plater v. District of Columbia DOT*, 530 F.Supp.2d 101, 2008 U.S. Dist. LEXIS 11 (2008).

Failure to comply with District of Columbia notice of claim statute barred black Metropolitan Police Department (MPD) employee's District of Columbia Human Rights Act (DCHRA) claim arising out of her failure to be promoted to Permanent Program Manager position; employee's letter to Mayor, MPD and Office of the Attorney General alleged only that District engaged in racial discrimination when it named white employee as Acting Program Manager, and employee was not in fact denied promotion to Permanent Program Manager position until two months later. *Kennedy v. D.C. Gov't*, 519 F.Supp.2d 50, 2007 U.S. Dist. LEXIS 78203 (2007).

District of Columbia police department's incident-based event report, which was prepared only minutes after pre-trial detainee committed suicide, was sufficient to satisfy District of Columbia's notice requirement, requiring that within six months of injury, the mayor had to be notified in writing of the injury, given that the report described the stop, search, and arrest of pre-trial detainee, stated the time detainee was found in his cell hanging from the bars by a makeshift noose made from his socks, and continued that detainee was taken to the medical examiner and pronounced dead, for purposes of suit brought by mother of pre-trial detainee alleging police officers violated pre-trial detainee's constitutional rights, as well as generic tort claims based on statute and the common law. *Powers-Bunce v. District of Columbia*, 479 F.Supp.2d 146, 2007 U.S. Dist. LEXIS 21778 (2007).

Failure of a nightclub patron to comply with a statutory notice requirement defeated her tort claims against District of Columbia officials. *Edwards v. Okie Dokie, Inc.*, 473 F.Supp.2d 31, 2007 U.S. Dist. LEXIS 8247 (2007).

Former inmate's failure to provide written notice to District of Columbia within six months of incident of time, place, cause, and circumstances of alleged incident in which he was sexually assaulted by another inmate in District correctional facility, as required by District Code provision, precluded former inmate from bringing action against District for negligence and negligent infliction of emotional distress. *Hunter v. Corr. Corp. of Am.*, 441 F.Supp.2d 78, 2006 U.S. Dist. LEXIS 51474 (2006).

Compliance with Tort Claims Act's notice requirement is mandatory as prerequisite to filing tort action against District of Columbia. *Jacqueline R. v. District of Columbia*, 370 F.Supp.2d 267, 2005 U.S. Dist. LEXIS 9172 (2005).

Compliance with six-month statutory notice requirement for filing action against District of Columbia for unliquidated damages is mandatory. *McRae v. Olive*, 368 F.Supp.2d 91, 2005 U.S. Dist. LEXIS 8505 (2005).

Unless it demonstrates compliance with the requirements of notice of claim statute, a plaintiff's suit against the District is properly dismissed. *Snowder v. District of Columbia*, 949 A.2d 590, 2008 D.C. App. LEXIS 261 (2008).

District was prejudiced by the failure by family, which had brought false arrest claims against District and police officer, to put it on notice that the initial stop of son was part of the false arrest claim, and thus, trial court was entitled to set aside damages award to son based on the initial stop, where the family's complaint contained only one sentence regarding the initial stop, the letter notifying the District of the family's claims focused on the arrests made outside the family's home and did not mention the initial stop of son, and the joint pretrial statement focused on the events outside the home and did not mention the initial stop. *Tolson v. District of Columbia*, 860 A.2d 336, 2004 D.C. App. LEXIS 564 (2004).

Compliance with statute prohibiting suits against District of Columbia unless District is notified of injury within six months is mandatory as a prerequisite for filing suit against the District. *Brown v. District of Columbia*, 853 A.2d 733, 2004 D.C. App. LEXIS 385 (2004).

Compliance with terms of statute mandating that a person file notice with District of Columbia prior to filing suit against the District is mandatory as a prerequisite to filing suit against the District. *Hubbard v. Chidel*, 790 A.2d 558, 2002 D.C. App. LEXIS 23 (2002), remanded by 840 A.2d 689, 2004 D.C. App. LEXIS 3 (D.C. 2004).

Compliance with statute requiring notice of claim against District of Columbia for unliquidated damages to persons or property is mandatory, and thus, failure to comply with the statute bars the claim. *Beeton v. District of*

Columbia, 779 A.2d 918, 2001 D.C. App. LEXIS 191 (2001).

Compliance with the terms of notice statute is a mandatory prerequisite to filing suit against the District of Columbia for unliquidated damages to person or property. *George v. Dade*, 769 A.2d 760, 2001 D.C. App. LEXIS 77 (2001).

Compliance with notice requirement for action against the District of Columbia is mandatory in actions to which the statute applies. *Dingwall v. District of Columbia Water & Sewer Auth.*, 766 A.2d 974, 2001 D.C. App. LEXIS 40 (2001), vacated by 773 A.2d 423, 2001 D.C. App. LEXIS 121 (D.C. 2001), reinstated by, remanded by 800 A.2d 686, 2002 D.C. App. LEXIS 307 (D.C. 2002).

Unless it demonstrates compliance with the requirements of the notice statute, a plaintiff's suit against the District of Columbia is properly dismissed because no right of action or entitlement to maintain an action accrues. *District of Columbia v. Arnold & Porter*, 756 A.2d 427, 2000 D.C. App. LEXIS 173 (2000).

Compliance with terms of statute requiring giving notice of claim against District within six months of injury is mandatory and is a prerequisite for filing suit against the District. D.C. Code 1981, § 12-309. *Gross v. District of Columbia*, 734 A.2d 1077, 1999 D.C. App. LEXIS 156 (1999).

Presuit notice requirements for maintaining suit against District of Columbia are mandatory, and claim against District cannot be maintained where there is failure to give written notice. D.C. Code 1981, § 12-309. *Doe by Fein v. District of Columbia*, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

Statutory notice requirements for persons contemplating personal injury or property damage claim against District of Columbia are mandatory. D.C. Code 1981, § 12-309. *Wharton v. District of Columbia*, 666 A.2d 1227, 1995 D.C. App. LEXIS 276 (1995).

To maintain action against District of Columbia for unliquidated damages, plaintiff is required by statute to provide written notice of approximate time, place, cause, and circumstances of injury to mayor within six months of injury, or to have police report filed. D.C. Code 1981, § 12-309. *Simmons v. District of Columbia Armory Bd.*, 656 A.2d 1155, 1995 D.C. App. LEXIS 81 (1995).

Failure to notify mayor of District of Columbia within six months of injury will result in dismissal of suit for unliquidated damages against District, unless entity being sued has been authorized by Congress to be sued. D.C. Code 1981, § 12-309. *Simmons v. District of Columbia Armory Bd.*, 656 A.2d 1155, 1995 D.C. App. LEXIS 81 (1995).

Congress did not authorize District of Columbia Armory Board to be sued, and personal

injury plaintiff's failure to notify District's mayor within six months of injury thus compelled dismissal; although Board had been captioned in other litigation and apparently had never challenged its amenity to suit, relevant statutory provisions revealed no clear intent by Congress to establish Armory Board as *sui juris*. D.C. Code 1981, §§ 2-301, 2-321, 2-324(2, 6, 8, 9), 2-344, 12-309. *Simmons v. District of Columbia Armory Bd.*, 656 A.2d 1155, 1995 D.C. App. LEXIS 81 (1995).

Written notice of injury given to mayor within six months of occurrence must be given before suit against city is begun. D.C. Code 1981, § 12-309. *Campbell v. District of Columbia*, 568 A.2d 1076, 1990 D.C. App. LEXIS 6 (1990).

Compliance with six-month statutory notice requirement for filing an action against the District of Columbia for unliquidated damages is mandatory. D.C. Code 1973, § 12-309. *Gwinn v. District of Columbia*, 434 A.2d 1376, 1981 D.C. App. LEXIS 354 (1981).

Trial court properly denied plaintiff's motion to file a second amended complaint adding District of Columbia as defendant in his action to recover unliquidated damages for injuries sustained at correctional facility, since plaintiff did not give notice in writing to Commissioner of District of Columbia within six months after injury as required by statute, and FBI report of the assault at correctional facility was not sufficient notice of the claim. D.C. Code § 12-309. *Eskridge v. Jackson*, 401 A.2d 986, 1979 D.C. App. LEXIS 361 (1979).

Six-month notice of claim requirements are mandatory; if there is no timely, written notice, plaintiff is precluded from litigating his claim. D.C. Code § 12-309. *Breen v. District of Columbia*, 400 A.2d 1058, 1979 D.C. App. LEXIS 349 (1979).

Compliance with statutory notice requirement that notice be given to mayor of possible litigation against the District of Columbia is mandatory. D.C. Code § 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

Where property owners failed to plead or prove notice of alleged defect in District of Columbia's specifications for constructing city streets and water pipes and property owners failed to give written notice to commissioner of alleged damage within six months after damage was sustained, property owners were precluded from recovering from District on tort theory for damages resulting from allegedly insufficient specifications for city streets and water pipes. D.C. Code § 12-309. *District of Columbia v. North Washington Neighbors, Inc.*, 367 A.2d 143, 1976 D.C. App. LEXIS 446 (1976), writ of certiorari denied by 434 U.S. 823, 98 S. Ct. 68, 54 L. Ed. 2d 80, 1977 U.S. LEXIS 2835 (1977).

Requirement that written notice of claim for damages against District of Columbia be given within six months of injury or damage is mandatory, and where such written notice was not given, claim could not be maintained. D.C. Code § 12-309. *Hill v. District of Columbia*, 345 A.2d 867, 1975 D.C. App. LEXIS 257 (1975).

Radiologist was required to give separate, timely notice to District of Columbia of his claim for contribution, which was based on allegation that District's operation of clinic where patient was treated was negligent, where radiologist was party to patient's malpractice action from the beginning. *Hubbard v. Chidel*, 131 WLR 425 (Super. Ct. 2003).

As a result of failure of radiologist to give separate, timely notice to District of Columbia of his claim for contribution, which was based on allegation that District's operation of clinic where patient was treated was negligent, radiologist could assert no claim for contribution against District and could only assert claim against patient's primary care physician. *Hubbard v. Chidel*, 131 WLR 425 (Super. Ct. 2003).

Pleadings.

If issue of sufficiency of plaintiffs' notice of their tort claim to District of Columbia had been omitted from pleadings, issue was tried by implied consent, pursuant to rule, in light of examination of plaintiffs' attorney about notice and plaintiffs' failure to object. D.C. Code 1981, § 12-309; Fed.Rules Civ.Proc.Rule 15(b), 18 U.S.C. *Kirkland v. District of Columbia*, 70 F.3d 629, 1995 U.S. App. LEXIS 33697 (C.A.D.C. 1995).

District court properly determined at the pleading stage that District of Columbia police officer was required to give notice to Mayor of approximate time, place, cause, and circumstances of injury or damage within six months of his injury in order to maintain claims under the Whistleblower Act and for intentional infliction of emotional distress. *McGee v. District of Columbia*, 723 F.Supp.2d 161, 2010 U.S. Dist. LEXIS 70893 (2010), affirmed by 2010 U.S. App. LEXIS 25905 (D.C. Cir. Dec. 17, 2010).

Since District of Columbia did not assert in its answer plaintiffs' failure to provide requisite notice to Mayor, that defense could not be raised by motion for judgment on the pleadings or for summary judgment until District first moved to amend its answer. *Giardino v. District of Columbia*, 505 F.Supp.2d 117, 2007 U.S. Dist. LEXIS 63201 (2007), dismissed without prejudice by 252 F.R.D. 18, 2008 U.S. Dist. LEXIS 62499 (D.D.C. 2008).

The defense of failure to comply with the statute requiring notice of an action against the District of Columbia is an affirmative defense. *Lerner v. District of Columbia*, 362 F.Supp.2d 149, 2005 U.S. Dist. LEXIS 3565 (2005), appeal

dismissed by 2005 U.S. App. LEXIS 21281 (D.C. Cir. Sept. 28, 2005).

A claim that is only implicit in statutorily required notice of claims to District of Columbia cannot be the basis for a later suit against the District. *Tibbs v. Williams*, 263 F.Supp.2d 39, 2003 U.S. Dist. LEXIS 8226 (2003).

Where plaintiff has sued mayor of District of Columbia, the mayor has timely notice of the suit, and circumstances manifest intention to sue the District, trial court should permit amendment of pleadings to make that reality clear. D.C. Code SCR, Civil Rules 8(f), 15(a, c); D.C. Code § 12-309. *Keith v. Washington*, 401 A.2d 468, 1979 D.C. App. LEXIS 348 (1979).

Notwithstanding fact that prior malpractice action was not decided on merits, municipal corporation had opportunity to litigate its claim for cost of care and treatment of infant hospital patient as counterclaim in that malpractice action brought against it by parent for alleged negligence in treatment of infant, wherein municipal corporation filed responsive pleading after its motion for summary judgment on ground that parent had not complied with notice requirements was denied without prejudice for lack of sufficient actual predicate, but since it failed to include that claim in its responsive pleading, subsequent action to recover those costs was barred by rule requiring that compulsory counterclaim be stated in responsive pleading. D.C. Code SCR, Civil Rule 13(a); D.C. Code § 12-309. *District of Columbia v. Morris*, 367 A.2d 571, 1976 D.C. App. LEXIS 437 (1976).

Police reports.

— Cause and circumstances, police reports.

Police report only sets forth "cause" if it recites facts from which it could be reasonably anticipated that claim against district might arise. D.C. Code 1981, § 12-309. *Doe by Fein v. District of Columbia*, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

Where police reports revealed identity of persons present when child fell, names of mother and father of the child, fact that the child fell as she and her mother and sister were descending stairs, name of security guard on duty in building at time of the accident, the number of emergency vehicle which transported injured child to hospital and its crew's provisional diagnosis of her injuries, and name of treating physician at hospital and his diagnosis and prognosis, it cannot be said that information regarding the "circumstances" of the child's fall was lacking for purpose of statute governing notice to mayor of possible litigation against the District of Columbia. D.C. Code § 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

For purpose of statute governing notice to mayor of possible litigation against the District of Columbia, police report provides sufficient notice of "cause" of injuries to satisfy the statutory requirement if it recites facts from which it could be reasonably anticipated that claim against that District might arise. D.C. Code § 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

Where police reports concerning fall of child through staircase at public housing project provided adequate information regarding the "circumstances" of the child's fall and recited facts from which it could be reasonably anticipated that claim against the District of Columbia might arise, the District had actual notice of the accident and the child's injuries so that the requirements of the statute governing notice to mayor of possible litigation against the District were met. D.C. Code § 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

Determination of whether police reports adequately framed the "circumstances" of incident upon which claim has been brought against the District of Columbia must be made with reference to purpose of statutory requirement governing notice to mayor of possible litigation against the District which is to give the District timely information concerning claim against it, so it may adequately prepare its defense. D.C. Code § 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

— In general.

In order to satisfy district notice of claim statute, police report must contain information as to time, place, cause, and circumstances of injury or damage with at least same degree of specificity required of written notice. D.C. Code 1981, § 12-309. *Doe by Fein v. District of Columbia*, 93 F.3d 861, 1996 U.S. App. LEXIS 21975 (C.A.D.C. 1996).

Pretrial detainee failed to satisfy police report alternative to notice provision for notice upon District of Columbia of claim of negligent supervision of police officers, where record contained no police report or, for that matter, any reason to believe that report existed. D.C. Code 1981, § 12-309. *Hunter v. District of Columbia*, 943 F.2d 69, 1991 U.S. App. LEXIS 20108 (C.A.D.C. 1991).

While a police report can satisfy District of Columbia's statutory notice requirement for common law tort claims, it does so only if it asserts facts from which the District could reasonably anticipate that a claim against the District would arise from a plaintiff; the existence of a police report, therefore, does not necessarily mean that the District has received the actual notice which the statute contemplates. *Martin v. District of Columbia*, 720

F.Supp.2d 19, 2010 U.S. Dist. LEXIS 65402 (2010).

A police report is an alternative form of notice added under statute requiring notice to District of Columbia in order to recover in suit against District to take care of those instances in which actual notice is had by the District from the police department, although technical notice may not have been filed by the person injured. *Mazloun v. D.C. Metro. Police Dep't*, 522 F.Supp.2d 24, 2007 U.S. Dist. LEXIS 81793 (2007).

Police report must include approximate time, place, cause, and circumstances of injury or damage in order to constitute sufficient notice for purposes of statute providing that action may not be maintained against District of Columbia unless written notice is given to mayor within six months after injury or damage. D.C. Code 1981, § 12-309. *Doe by Fein v. District of Columbia*, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

Fire department report allegedly within possession of city did not satisfy requirement that mayor receive written notice of injury within six months of occurrence in order for injured party to have right of action for damages against city, even if police report would have satisfied written notice requirement; statutory exception to formal notice if city had actual notice was limited to police reports received by city. D.C. Code 1981, § 12-309. *Campbell v. District of Columbia*, 568 A.2d 1076, 1990 D.C. App. LEXIS 6 (1990).

While tort claims statute permits reports by police to serve as alternative form of notice of claim against District, existence of police report does not necessarily mean that District has received type of actual notice which statute contemplated, that is, information as to time, place, cause and circumstances of injury or damage which is basis for claim; thus, if police report is means by which District is to be notified, actual notice provided by report must contain information required by written notice. D.C. Code 1981, § 12-309; Civil Rule 54(b); Court of Appeals Rule 4(a). *Allen v. District of Columbia*, 533 A.2d 1259, 1987 D.C. App. LEXIS 500 (1987).

While police reports made in regular course of duty are sufficient to give District of Columbia government notice of a claim as against it for unliquidated damages, such reports must still meet criteria established by notice statute. D.C. Code § 12-309. *Braxton v. National Capital Housing Authority*, 396 A.2d 215, 1978 D.C. App. LEXIS 584 (1978).

While statute requiring notice to mayor of possible litigation against the District of Columbia states that written police report made in regular course of duty is sufficient notice and does not expressly incorporate requirements of forepart of the statute concerning approximate

time, place, cause and circumstances of the incident such incorporation is necessary in order for the police report provision to be consistent with the purpose of the statute of assuring adequate information for proper and efficient disposition of claims by the District. D.C. Code § 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

Whether particular police report or series of reports constitutes statutory notice to the District of Columbia under provision governing notice to mayor of possible litigation against the District can only be reached after consideration of particular facts of the case, nature of report itself and objective sought to be attained by the notice provision. D.C. Code § 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

Administrative complaint to officials at Lorton Reformatory is not the equivalent of a police report and thus does not satisfy this section's requirement of notice to the District of Columbia. *Jones v. Palmer*, 113 WLR 2633 (Super. Ct. 1985).

— Injury or damage, police reports.

Statement in police report that child's siblings were living in foster care when child was burned was insufficient to put District of Columbia on notice of its liability to child based on Department of Human Services' (DHS) alleged failure to comply with its statutory duty, and thus, police report did not meet statutory presuit notice requirement for maintaining suit against District; immediately after notation that siblings were in foster care, report stated that there had been "no allegation of abuse." D.C. Code 1981, §§ 6-2104(b)(5, 6), 12-309. *Doe by Fein v. District of Columbia*, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

Police report of plaintiff's arrest, coupled with his trial and acquittal and official United States Attorney "reports" on such case, did not, for purposes of plaintiff's claim against District of Columbia for false arrest and malicious prosecution, constitute sufficient compliance with portion of notice of claim statute which provides that "a report in writing by the Metropolitan Police Department, in regular course of duty, is a sufficient notice under this section." D.C. Code §§ 12-309, 22-2701. *Jenkins v. District of Columbia*, 379 A.2d 1177, 1977 D.C. App. LEXIS 274 (1977).

Police report which pertained to collision involving automobile owned by District of Columbia and operated by one of its employees and which indicated that no personal injuries resulted from the accident failed to satisfy requirements of "notice of claim" statute with respect to motorist's claim against the District for personal injuries allegedly sustained in the accident. D.C. Code § 12-309. *Miller v. Spencer*,

330 A.2d 250, 1974 D.C. App. LEXIS 339 (1974).

While police accident report may suffice as notice of claim against District of Columbia in lieu of written notice by claimant, his agent or attorney, the police report must, when facts are apparent, contain at least substance of same information required of written notice filed by claimant and when it does not because no injuries were apparent at time of accident, it is duty of claimant to supply additional information when injuries become apparent. D.C. Code § 12-309. *Miller v. Spencer*, 330 A.2d 250, 1974 D.C. App. LEXIS 339 (1974).

Police report, which set forth the circumstances surrounding plaintiff's arrest for unlawful entry and carrying a dangerous weapon, was not notice of an injury to person or damage to property for purposes of Code provision prohibiting maintenance of an action against the District of Columbia for unliquidated damages to person or property unless, within six months after the injury or damage, claimant has given written notice to the District of Columbia Commissioner of the approximate time, place, cause, and circumstances of the injury or damage. D.C. Code §§ 4-134a, 12-309. *Brown v. District of Columbia*, 304 A.2d 292, 1973 D.C. App. LEXIS 277 (1973).

— Investigations by District, police reports.

Requirement of District of Columbia statute of written notice of claim for injury, providing that police report is sufficient, was satisfied where detective immediately and thoroughly investigated accident and promptly made detailed official report. D.C. Code 1961, § 12-208. *Thomas v. Potomac Electric Power Co.*, 266 F. Supp. 687, 1967 U.S. Dist. LEXIS 9060 (D.D.C.1967).

Mandatory notice requirement for tort claims against District of Columbia was not satisfied by administrative incident reports regarding plaintiff's injuries. D.C. Code 1981, § 12-309. *Winters v. District of Columbia*, 595 A.2d 960, 1991 D.C. App. LEXIS 222 (1991).

Fact that District of Columbia investigated incident in which plaintiff was injured as a result of letter from plaintiff's counsel to District was irrelevant to the question of whether the letter itself was "notice in writing" within meaning of the statute requiring that in order for an action to be maintained against District of Columbia, a claimant, within six months of the injury, must give written notice of "the approximate time, place, cause, and circumstances of the injury or damage." D.C. Code § 12-309. *Washington v. District of Columbia*, 429 A.2d 1362, 1981 D.C. App. LEXIS 261 (1981).

— Specificity, police reports.

Statute providing that action may not be maintained against District of Columbia unless

written notice is given to mayor within six months after injury and that police report is sufficient notice does not require precise exactness with respect to details of police reports. D.C. Code 1981, § 12-309. *Doe by Fein v. District of Columbia*, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

In order for police report made in regular course of duty to satisfy requirement of statute governing notice to mayor of possible litigation against the District of Columbia, it must contain information as to approximate time, place, cause and circumstances of injury or damage with at least same degree of specificity required of written notice. D.C. Code § 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

For police accident report to satisfy statutory notice of claim requirement for maintenance of action against the District of Columbia, report must contain information as to time, place, cause and circumstances of injury or damage with at least the same degree of specificity required of a written notice filed by claimant; report must do more than merely report happening of an event or accident. D.C. Code § 12-309. *Miller v. Spencer*, 330 A.2d 250, 1974 D.C. App. LEXIS 339 (1974).

— Sufficiency generally, police reports.

For purposes of suit against District by father of woman who had been raped and murdered by parolee under supervision of District's Department of Corrections, provisions of statute requiring notice to District of claims against it were satisfied by police reports filed with relation to such murder and rape. D.C. Code § 12-309. *Rieser v. District of Columbia*, 563 F.2d 462, 1977 U.S. App. LEXIS 12002 (C.A.D.C. 1977), modified en banc by 580 F.2d 647, 188 U.S. App. D.C. 384, 1978 U.S. App. LEXIS 11361 (1978).

Police report of arrest did not provide notice to District of Columbia of potential tort claims by arrestee as required to satisfy District of Columbia statutory notice requirement, where report suggested a lawful arrest, and contained no reference to any assault or injury of arrestee. *Martin v. District of Columbia*, 720 F.Supp.2d 19, 2010 U.S. Dist. LEXIS 65402 (2010).

When evaluating content of District of Columbia police report to determine whether it provides actual notice to District of potential tort plaintiff's claims, courts must interpret notice requirements liberally and resolve close cases in favor of finding compliance with requirements. *Clark v. Estate of Flach*, 604 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 25483 (2009).

The inquiry with respect to a police report's capacity to satisfy statute providing six-month period within which plaintiff must notify Mayor of claim against District of Columbia is

whether the District should have anticipated, as a consequence of receiving the police reports, that a complaint by plaintiff would be forthcoming. *Jones v. Ritter*, 587 F.Supp.2d 152, 2008 U.S. Dist. LEXIS 94383 (2008).

Police report prepared by officer regarding arrest during which officers allegedly use excessive force satisfied requirements of statute providing six-month period within which plaintiff must notify Mayor of claim against District of Columbia, where report provided the approximate time, place, cause, and circumstances of the injuries arrestee suffered. *Jones v. Ritter*, 587 F.Supp.2d 152, 2008 U.S. Dist. LEXIS 94383 (2008).

Where a police report fails to provide sufficient facts from which it could be reasonably anticipated that a claim against the District of Columbia might arise, the police report does not provide adequate notice for legal action against the District. *Sperling v. Wash. Metro. Area Transit Auth.*, 542 F.Supp.2d 76, 2008 U.S. Dist. LEXIS 27522 (2008).

District of Columbia police report, which identified the approximate time and place of the incident in which pedestrian was struck and killed by transit authority bus, did not, standing alone, provide adequate notice of personal representative's claim against the District; while the police report indicated that the pedestrian was knocked to the ground from the initial impact of the bus that made a left turn in violation of a posted no left turn sign, it did not make any mention of a defect in the design or maintenance of the traffic signs at the subject location, which was the basis of personal representative's negligence claim against the District. *Sperling v. Wash. Metro. Area Transit Auth.*, 542 F.Supp.2d 76, 2008 U.S. Dist. LEXIS 27522 (2008).

Police reports may be sufficient to satisfy the notice requirement for actions against District of Columbia because the law recognizes that written notice by a claimant should not be a prerequisite to legal action if, in fact, actual notice in the form of a police report has been received by the District. *Sperling v. Wash. Metro. Area Transit Auth.*, 542 F.Supp.2d 76, 2008 U.S. Dist. LEXIS 27522 (2008).

Under District of Columbia law, police report indicating that plaintiff "fell on some glass and hit his head on the ground" while on public sidewalk provided District with sufficient notice of basis for District's potential liability, and thus satisfied District's notice of claim statute, even though report gave no indication as to how plaintiff came to fall on glass or how glass came to be on sidewalk. *Plater v. District of Columbia DOT*, 530 F.Supp.2d 101, 2008 U.S. Dist. LEXIS 11 (2008).

In order for police report to satisfy District of Columbia statute requiring that District be provided with notice of claim as precondition to

tort action against it, report must be sufficiently detailed so as to place District on notice of potential claim. *Plater v. District of Columbia DOT*, 530 F.Supp.2d 101, 2008 U.S. Dist. LEXIS 11 (2008).

Complaint summary report created by District of Columbia police department after Lebanese nightclub patron complained of mistreatment in incident at nightclub with off-duty police officers contained all of the requisite information with respect to a potential claim of assault and battery, as required to put District of Columbia on notice for purposes of patron's assault and battery claims. *Mazloun v. D.C. Metro. Police Dep't*, 522 F.Supp.2d 24, 2007 U.S. Dist. LEXIS 81793 (2007).

A police report satisfies District of Columbia law requiring notice of suit to District in order to recover against District if it contains information as to the time, place, cause and circumstances of injury or damage with at least the same degree of specificity required of a written notice. *Mazloun v. D.C. Metro. Police Dep't*, 522 F.Supp.2d 24, 2007 U.S. Dist. LEXIS 81793 (2007).

The inquiry with respect to a police report's capacity to satisfy notice requirement in order to recover in suit against District of Columbia is whether the District should have anticipated, as a consequence of receiving the police reports, that a complaint by plaintiff would be forthcoming. *Mazloun v. D.C. Metro. Police Dep't*, 522 F.Supp.2d 24, 2007 U.S. Dist. LEXIS 81793 (2007).

Under District of Columbia law, police report regarding sexual assault of one minor at camp owned and operated by District sufficiently advised District of circumstances surrounding alleged sexual assault against another minor at camp to satisfy notice requirement under Tort Claims Act, where report contained name and age of alleged perpetrator, names of four campers, including minor, who were allegedly sexually assaulted, location of alleged assaults, date on which alleged injury against complainant occurred, description of how injury against complainant occurred, information that camp was run by District, and statement that perpetrator was "in charge." *Jacqueline R. v. District of Columbia*, 370 F.Supp.2d 267, 2005 U.S. Dist. LEXIS 9172 (2005).

Under District of Columbia law, whether police report satisfies statutory notice requirement of Tort Claims Act is question of law. *Jacqueline R. v. District of Columbia*, 370 F.Supp.2d 267, 2005 U.S. Dist. LEXIS 9172 (2005).

Under District of Columbia law, existence of police report does not result in compliance with Tort Claims Act's notice provision, unless report contains information as to time, place, cause, and circumstances of injury or damage with at least same degree of specificity required of

written notice. *Jacqueline R. v. District of Columbia*, 370 F.Supp.2d 267, 2005 U.S. Dist. LEXIS 9172 (2005).

Under District of Columbia law, police reports satisfy requirement that District receive notice of tort claims against it only if they actually notify District of injury claimed. *Feirson v. Dist. of Columbia*, 315 F.Supp.2d 52, 2004 U.S. Dist. LEXIS 5264 (2004), affirmed by 2007 U.S. Dist. LEXIS 25356 (W.D. Okla. Apr. 4, 2007).

Under District of Columbia law, police officer's injury report gave District sufficiently detailed notice of cause and circumstances of injury to satisfy statutory notice requirements before bringing tort suit against District, where report was in writing and prepared in regular course of duty, contained sufficient information on time and place of injury, described factual cause of those injuries, and suggested that armament systems proficiency (ASP) training and fighting, in which officer was injured, was condition of his continued employment. *Feirson v. Dist. of Columbia*, 315 F.Supp.2d 52, 2004 U.S. Dist. LEXIS 5264 (2004), affirmed by 2007 U.S. Dist. LEXIS 25356 (W.D. Okla. Apr. 4, 2007).

Police report did not satisfy requirement that hotel restaurant patron, whose husband was arrested in connection with officers' attempt to remove him from restaurant, file notice with mayor prior to bringing lawsuit seeking unliquidated damages against District of Columbia based on incident, inasmuch as police report, which was made out against husband, did not specify that patron was present at scene or that she was involved in underlying events in any way, but rather only mentioned her as immediate relative of husband; report thus did not adequately put District of Columbia on notice of possibility of patron's claims for negligent supervision and intentional and negligent infliction of emotional distress. *Parker v. Grand Hyatt Hotel*, 124 F.Supp.2d 79, 2000 U.S. Dist. LEXIS 17024 (2000).

A police report is sufficient as notice of claim against District of Columbia only if the report specifies all the information that is required of claimant's written notice under statute. *Parker v. Grand Hyatt Hotel*, 124 F.Supp.2d 79, 2000 U.S. Dist. LEXIS 17024 (2000).

Police reports may suffice as notice of potential lawsuit against the District, but the report must state both the cause and the circumstances of the injury with enough particularity to inform the District of a reasonable basis for anticipating legal action. *Snowder v. District of Columbia*, 949 A.2d 590, 2008 D.C. App. LEXIS 261 (2008).

Police reports regarding shooting incidents out of which plaintiffs' personal injury claims against District of Columbia arose were not sufficient to satisfy plaintiff's statutory obliga-

tion to provide prompt notice of claims, where no evidence was presented that reports were prepared by police officers, in writing, in regular course of duty. D.C. Code 1981, § 12-309. *Cunningham v. District of Columbia*, 584 A.2d 573, 1990 D.C. App. LEXIS 326 (1990).

Police report details were not sufficient in and of themselves to signal likelihood that claimant's false arrest allegation would generate legal action and thus, failure of claimant's written notice to department to give time, place, cause and circumstances of claimant's suit, precluded that suit. D.C. Code 1981, § 12-309; Civil Rule 54(b); Court of Appeals Rule 4(a). *Allen v. District of Columbia*, 533 A.2d 1259, 1987 D.C. App. LEXIS 500 (1987).

Police reports stating apartment had been entered by prying open rear lock on door and containing name of tenant and approximate time and place of burglary were not sufficient to give District of Columbia notice of forthcoming claim against it for negligent action on part of housing authority which operated apartment. D.C. Code § 12-309. *Braxton v. National Capital Housing Authority*, 396 A.2d 215, 1978 D.C. App. LEXIS 584 (1978).

Where police report made in regular course of duty noted that child slipped and fell through guard rail after attempting to climb flight of stairs, police investigator went to scene within 48 hours of the accident and investigated the circumstances and interviewed the security officer of the apartment who had been first contacted by the mother after the child's fall, the investigator asserted in the report that he "will attempt to . . . pinpoint the exact location of alleged fall. . . .," the police report recited facts from which it could be reasonably anticipated that claim against the District of Columbia might arise, for purposes of statutory notice requirement. D.C. Code § 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

Reports prepared by the Metropolitan Police Department (MPD) regarding miscalibrated breath-test machines did not provide the District of Columbia with notice, within the meaning of the statute prohibiting the maintenance of any action against the District of Columbia for unliquidated damages unless certain written notice was provided to the mayor within six months after the injury was suffered and providing that a written report by the MPD in regular course of duty was sufficient notice, that plaintiffs had allegedly been injured by the use of miscalibrated machines in their arrests for driving while intoxicated (DWI), for purposes of the plaintiffs' negligence action against the District of Columbia, even though the reports prompted a partially successful District of Columbia investigation of affected cases; time periods set forth in one report as encompassing the miscalibrations, the shortest of which was

three months, provided the District of Columbia with uncertain dates of plaintiffs' alleged injuries, and the reports did not specify the locale of the alleged injuries other than that the traffic stops at issue presumably occurred in the District of Columbia. *Jones v. D.C.*, 139 WLR 2517 (Super. Ct. 2011).

Purpose.

The purposes of the statutory requirement that notice be given within six months after an injury was sustained to permit suit against the District of Columbia, are: (1) to protect the District against unreasonable claims, and (2) to give reasonable notice to the District so that the facts may be ascertained and, if possible, deserving claims adjusted and meritless claims resisted. *Enders v. District of Columbia*, 4 A.3d 457, 2010 D.C. App. LEXIS 547 (2010).

Purposes of District of Columbia statute precluding action against the District for unliquidated damages unless, within six months after the injury, claimant has given notice in writing to the commissioner of the District of Columbia of the circumstances of the injury is primarily to provide the District an opportunity to investigate claims while circumstances giving rise to them are fresh and, secondarily, to provide an opportunity for settlement. D.C. Code§ 12-309. *Dellums v. Powell*, 566 F.2d 216, 1977 U.S. App. LEXIS 12164 (C.A.D.C. 1977), writ of certiorari denied by 438 U.S. 916, 98 S. Ct. 3146, 98 S. Ct. 3147, 57 L. Ed. 2d 1161, 1978 U.S. LEXIS 2450 (1978).

Purpose of requirement that potential tort plaintiffs give written notice to District of Columbia within six months of an injury in order to bring suit is to allow the District to conduct a prompt investigation of an injured person's claim, separate and apart from any investigation the District may conduct as a matter of course into a hit-and-run automobile accident involving a stolen vehicle. *Clark v. Estate of Flach*, 604 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 25483 (2009).

Purpose of statute providing six-month period within which plaintiff must notify Mayor of claim against District of Columbia is to give the District officials reasonable notice of the incident so that the facts may be ascertained and, if possible, deserving claims adjusted and meritless claims resisted. *Jones v. Ritter*, 587 F.Supp.2d 152, 2008 U.S. Dist. LEXIS 94383 (2008).

The purpose of the District of Columbia Human Rights Act's notice requirement is to provide an early warning to District of Columbia officials regarding litigation likely to occur in the future. *Johnson v. District of Columbia*, 572 F.Supp.2d 94, 2008 U.S. Dist. LEXIS 63934 (2008).

Purpose of statutory notice requirement under District of Columbia's Tort Claims Act is to

(1) protect District of Columbia against unreasonable claims and (2) to give reasonable notice to District of Columbia so that facts may be ascertained and, if possible, deserving claims adjudicated and meritless claims resisted. *Jacqueline R. v. District of Columbia*, 370 F.Supp.2d 267, 2005 U.S. Dist. LEXIS 9172 (2005).

Notice under the statute governing actions against the District of Columbia for unliquidated damages is a condition precedent to filing suit against the District, and is designed to ensure that District officials are given prompt notice of claims for potentially large sums of money so that they could quickly investigate before evidence became lost or witnesses unavailable, correct hazardous or potentially hazardous conditions, and settle meritorious claims. *Jones v. District of Columbia*, 346 F.Supp.2d 25, 2004 U.S. Dist. LEXIS 23304 (2004), affirmed in part and reversed in part by, remanded by 429 F.3d 276, 368 U.S. App. D.C. 279, 2005 U.S. App. LEXIS 24523, 87 Empl. Prac. Dec. (CCH) P42144, 96 Fair Empl. Prac. Cas. (BNA) 1441 (2005).

Purpose of District of Columbia statute requiring injured party to provide District of Columbia government with notice in writing of approximate time, place, cause, and circumstances of injury or damage is to provide officials with early notice so that they may promptly investigate matter to preserve evidence and identify witnesses, correct condition to avoid future problems, and engage in settlement negotiations to resolve claims with merit. D.C. Code 1981, § 12-309. *Williams v. District of Columbia*, 916 F. Supp. 1, 1996 U.S. Dist. LEXIS 1338 (1996).

Statute to effect that suits against District of Columbia to recover unliquidated damages are barred unless claimant within six months after injury or damage provides written notice to mayor stating circumstances surrounding his claim was intended to place district in position to settle deserving claims at earliest possible time, at savings to taxpayer, and to obtain evidence necessary to defend competently against undeserving claims, also conserving taxpayer resources. D.C. Code § 12-309. *Pinkney v. District of Columbia*, 439 F. Supp. 519, 1977 U.S. Dist. LEXIS 13407 (1977).

The purpose of statute requiring giving of notice of claim as prerequisite to maintenance of action against District of Columbia is to give District's officials reasonable notice of accident so that facts may be ascertained and, if possible, claim adjusted. D.C. Code § 12-309. *Boone v. District of Columbia*, 294 F. Supp. 1156, 1968 U.S. Dist. LEXIS 9981 (D.D.C.1968).

The purposes of the statute requiring claimants to provide notice of an injury to the District of Columbia within six months after an injury was incurred in order to maintain an

action against the District are: (1) to allow the District to investigate potential claims so that evidence may be gathered while still available; (2) to enable the District to correct defective conditions, thus increasing public safety; and (3) to facilitate settlement of meritorious claims and resistance of frivolous ones. *Tucci v. District of Columbia*, 956 A.2d 684, 2008 D.C. App. LEXIS 401 (2008).

Statute prohibiting suits against District of Columbia unless District is notified of injury within six months is not, and does not function as, a statute of limitations; rather, it imposes a notice requirement on everyone with a tort claim against the District of Columbia. *Brown v. District of Columbia*, 853 A.2d 733, 2004 D.C. App. LEXIS 385 (2004).

The purposes of statute prohibiting suits against District of Columbia unless District is notified of injury within six months are: (1) to allow the District to investigate potential claims so that evidence may be gathered while still available; (2) to enable the District to correct defective conditions, thus increasing public safety; and (3) to facilitate settlement of meritorious claims and resistance of frivolous ones. *Brown v. District of Columbia*, 853 A.2d 733, 2004 D.C. App. LEXIS 385 (2004).

Statute setting forth presuit notice requirements for persons considering personal injury or property damage claim against District of Columbia was intended by Congress to ensure that District officials would be given reasonable notice of an accident so that the facts may be ascertained and, if possible, the claims adjusted. D.C. Code 1981, § 12-309. *Wharton v. District of Columbia*, 666 A.2d 1227, 1995 D.C. App. LEXIS 276 (1995).

Requirement of prompt notice by persons considering personal injury or property damage claim against District of Columbia was designed to enable District officials to make prompt investigation before evidence was lost or witnesses became unavailable, to correct potentially hazardous conditions, and to settle meritorious claims. D.C. Code 1981, § 12-309. *Wharton v. District of Columbia*, 666 A.2d 1227, 1995 D.C. App. LEXIS 276 (1995).

Purpose of statute setting forth presuit notice requirements for persons considering personal injury or property damage claim against District of Columbia is to give District timely information so it may adequately prepare its defense. D.C. Code 1981, § 12-309. *Wharton v. District of Columbia*, 666 A.2d 1227, 1995 D.C. App. LEXIS 276 (1995).

Purposes of ordinance requiring letter to be sent to Mayor of District of Columbia before filing personal injury suit against District are: to allow District to investigate potential claims so that evidence may be gathered while still available; to enable District to correct defective conditions; and to facilitate settlement of mer-

itorious claims and resistance of frivolous ones. D.C. Code 1981, § 12-309. *Hardy v. District of Columbia*, 616 A.2d 338, 1992 D.C. App. LEXIS 289 (1992).

Statute requiring notice in writing within six months of event in order to maintain an action against the District of Columbia for unliquidated damages to person or property was intended by Congress to ensure that officials would be given prompt notice of claims for potentially large sums of money so that they could quickly investigate before evidence became lost or witnesses unavailable, correct hazardous or potentially hazardous conditions, and settle meritorious claims. D.C. Code 1973, § 12-309. *Gwinn v. District of Columbia*, 434 A.2d 1376, 1981 D.C. App. LEXIS 354 (1981).

Purpose of statute requiring notice in writing of circumstances of injury or damage to be sent to mayor within six months after injury or damage was sustained before action can be maintained against the District of Columbia for unliquidated damage is to give the District officials sufficient notice of claim so as to enable them to gather all pertinent facts and, if possible, adjust claim, as well as to protect District from unreasonable claims. D.C. Code § 12-309. *Braxton v. National Capital Housing Authority*, 396 A.2d 215, 1978 D.C. App. LEXIS 584 (1978).

Statute providing that no action may be maintained against District of Columbia for unliquidated damages to person or property unless, within six months of injury or damage, written notice is given was intended to insure that District officials would be given reasonable notice of accident so that facts might be ascertained, and, if possible, claim adjusted. D.C. Code § 12-309. *Shehyn v. District of Columbia*, 392 A.2d 1008, 1978 D.C. App. LEXIS 326 (1978).

Rationale underlying statute requiring notice to mayor of possible litigation against the District of Columbia is to (1) protect the District against unreasonable claims and (2) to give reasonable notice to the District so that the facts may be ascertained and, if possible, deserving claims adjusted and meritless claims resisted. D.C. Code § 12-309. *Pitts v. District of Columbia*, 391 A.2d 803, 1978 D.C. App. LEXIS 306 (1978).

Purpose of statute, which requires that District of Columbia be given notice of claim against it for liquidated damages within six months, gives protection against unreasonable claims and affordance of the opportunity for appropriate government officials to ascertain the facts, and, if appropriate, to adjust the claim. D.C. Code § 12-309. *Jenkins v. District of Columbia*, 379 A.2d 1177, 1977 D.C. App. LEXIS 274 (1977).

Statute which provides that damage actions may not be maintained against District of Co-

lumbia unless notice of claim is given within six months after injury or damage was sustained was enacted to protect District of Columbia against unreasonable claims, and to give appropriate governmental officials reasonable notice of an accident so that facts might be ascertained and, if possible, the claim adjusted. D.C. Code § 12-309. *Hill v. District of Columbia*, 345 A.2d 867, 1975 D.C. App. LEXIS 257 (1975).

Purposes of this section are to put the government on notice to preserve all of its records, and to enable prompt investigation prior to the loss or destruction of evidence; a fair inference is that this section also serves to facilitate the preservation of evidence uncovered through such prompt investigation. *Williams v. District of Columbia*, 116 WLR 41 (Super. Ct. 1988).

Questions of fact.

Issue of whether claimant filed claim against District of Columbia with mayor within six months presented fact questions that could not be resolved on motion to dismiss on timeliness grounds claimant's state law claims against District officials. *Day v. D.C. Dep't of Consumer & Regulatory Affairs*, 191 F.Supp.2d 154, 2002 U.S. Dist. LEXIS 4907 (2002).

Material issues of disputed fact as to whether District of Columbia received formal notice of arrestee's negligence claim on last day of statutory notice period or day thereafter and whether police reports made in connection with case satisfied statutory notice requirements precluded judgment dismissing arrestee's negligence claim against District of Columbia with prejudice. D.C. Code 1981, § 12-309. *Williams v. District of Columbia*, 676 F. Supp. 329, 1987 U.S. Dist. LEXIS 12575 (1987).

Requisites of notice generally.

Expert testimony was not required for sergeant in District of Columbia Fire and Emergency Medical Services (DCFEMS) to establish prima facie case of negligence against District in connection with its alleged failure to comply with either federal antidiscrimination laws or DCFEMS Department's rules, regulations, procedures, and laws in effect at the time of alleged discrimination, and in fact neither technical background nor sophisticated professional judgment was necessary to determine whether District engaged in age discrimination because jurors were regularly called upon by courts to make such determinations without expert testimony. *Lindsey v. District of Columbia*, 810 F.Supp.2d 189, 2011 U.S. Dist. LEXIS 103492 (2011).

To comply with notice provisions of District of Columbia's Tort Claims Act, District must be apprised of approximate time, place, cause, and circumstances of injury or damage. *Jacqueline R. v. District of Columbia*, 370 F.Supp.2d 267, 2005 U.S. Dist. LEXIS 9172 (2005).

Compliance with District of Columbia statute requiring a party to provide government with written notice of a claim within six months of injury is mandatory and statute is construed narrowly; however, precise exactness is not required, and once notice is provided, content of notice is construed liberally. D.C. Code 1981, § 12-309. *Williams v. District of Columbia*, 916 F. Supp. 1, 1996 U.S. Dist. LEXIS 1338 (1996).

Notice of claim against District of Columbia is fatally defective if one or more of the statutory elements is lacking. D.C. Code § 12-309. *Boone v. District of Columbia*, 294 F. Supp. 1156, 1968 U.S. Dist. LEXIS 9981 (D.D.C.1968).

That citizens complained, that public employees reported the incident, and that a slew of suits and letters were timely filed did not provide statutory notice to the District of Columbia of business entities' claims for damages for District's alleged negligence in the rupture of a water main pipe. *District of Columbia v. Arnold & Porter*, 756 A.2d 427, 2000 D.C. App. LEXIS 173 (2000).

When notifying District pursuant to Tort Claims Act, four items of information must be provided in order for notice to comport with terms of statute, District must be apprised of approximate time, place, cause and circumstances of injury or damage. D.C. Code 1981, § 12-309; Civil Rule 54(b); Court of Appeals Rule 4(a). *Allen v. District of Columbia*, 533 A.2d 1259, 1987 D.C. App. LEXIS 500 (1987).

Statute requiring notice of claims against the District of Columbia is to be strictly construed because it is in derogation of the common law; thus, precise exactness is not absolutely essential with respect to the details of the statement giving notice. D.C. Code 1981, § 12-309. *Romer v. District of Columbia*, 449 A.2d 1097, 1982 D.C. App. LEXIS 428 (1982).

Letter, which was sent by tenant's attorney to National Capital Housing Authority stating that negligence on part of its employees was cause of burglary of tenant's apartment, which failed to specify time, place, cause and circumstances of claim, and which was not sent to mayor, as required by statute, did not meet notice requirements necessary for suits to be filed against District of Columbia. D.C. Code § 12-309. *Braxton v. National Capital Housing Authority*, 396 A.2d 215, 1978 D.C. App. LEXIS 584 (1978).

Review.

Claim that nonappealability of district court order refusing certification of plaintiff class, in action against District of Columbia and certain federal and local officials based on alleged unlawful arrests and detentions of plaintiffs during 1971 May Day demonstrations, effectively vitiated damage claims of nonlitigating members of class who would now be time-barred from instituting their own lawsuits did not

require application of "death knell" doctrine to permit review of noncertification order since, due to delay in original commencement of action, and even assuming that class action feature of complaint tolled limitations period until district judge ruled on certification, portion of period remaining thereafter had already elapsed when appeal reached Court of Appeals. D.C. Code §§ 1-131, 1-161(a), 12-309. *Knable v. Wilson*, 570 F.2d 957, 1977 U.S. App. LEXIS 5392 (C.A.D.C. 1977).

The Court of Appeals would review de novo, on former District of Columbia (DC) employee's appeal from summary judgment on his disability discrimination claims against DC, whether his claims were time-barred, whether statutory notice requirements prevented him from presenting claims under Human Rights Act (HRA) for liquidated damages, whether those notice requirements prevented him from suing Public Service Commission (PSC) of DC, as distinct from DC, and whether record supported DC's position that employee could not establish that he was disabled or regarded as disabled. *Jaiyeola v. District of Columbia*, 40 A.3d 356, 2012 D.C. App. LEXIS 135 (2012).

Compliance with statute prohibiting suits against District of Columbia unless District is notified of injury within six months is question of law that Court of Appeals reviews de novo. *Brown v. District of Columbia*, 853 A.2d 733, 2004 D.C. App. LEXIS 385 (2004).

Compliance with terms of statute mandating that a person file notice with District of Columbia prior to filing suit against the District is a question of law that is reviewed de novo. *Hubbard v. Chidel*, 790 A.2d 558, 2002 D.C. App. LEXIS 23 (2002), remanded by 840 A.2d 689, 2004 D.C. App. LEXIS 3 (D.C. 2004).

Questions of whether radiologist, whose employer gave timely notice to District of Columbia of claim for contribution, was required to give the District separate notice, and whether a proper claim for contribution by radiologist and his employer against the District was before the trial court, required remand. *Hubbard v. Chidel*, 790 A.2d 558, 2002 D.C. App. LEXIS 23 (2002), remanded by 840 A.2d 689, 2004 D.C. App. LEXIS 3 (D.C. 2004).

Compliance with statute prohibiting suits against District of Columbia unless District is notified within six months of the damage or injury is question of law that Court of Appeals reviews de novo. *George v. Dade*, 769 A.2d 760, 2001 D.C. App. LEXIS 77 (2001).

Compliance with notice statute governing claims against the District of Columbia is a question of law that the Court of Appeals reviews de novo. *District of Columbia v. Arnold & Porter*, 756 A.2d 427, 2000 D.C. App. LEXIS 173 (2000).

Compliance with statute prohibiting suits against District of Columbia unless District is

notified of injury within six months is question of law that Court of Appeals reviews de novo. D.C. Code 1981, § 12-309. *District of Columbia v. Ross*, 697 A.2d 14, 1997 D.C. App. LEXIS 131 (1997).

Question of whether personal injury plaintiff who sued District of Columbia met presuit notice requirements was one of law; therefore, Court of Appeals considered that question de novo, and the trial judge's resolution of it was not accorded deference on appeal. D.C. Code 1981, § 12-309. *Wharton v. District of Columbia*, 666 A.2d 1227, 1995 D.C. App. LEXIS 276 (1995).

Court of Appeals did not delay disposition of appeal, even though opinion, which had res judicata effect on underlying decision forming basis for appeal, was being clarified; if clarification was granted, appellant could petition for adequate relief to court which had issued underlying decision. D.C. Code 1981, § 12-309. *Group Health Asso. v. District of Columbia General Hospital*, 540 A.2d 1104, 1988 D.C. App. LEXIS 77 (1988).

In prisoner's false imprisonment and battery action purportedly brought against District of Columbia, remand was required to determine whether prisoner had in fact sued the District where trial court did not expressly rule on such question in dismissing prisoner's complaint, but prisoner gave notice to the District of intention to sue, his complaint against District officials was limited to their official capacities, and corporation counsel made pretrial statement indicating awareness of fact that action was against the District. D.C. Code § 12-309. *Keith v. Washington*, 401 A.2d 468, 1979 D.C. App. LEXIS 348 (1979).

Standing.

Disabled District of Columbia lottery players, who depended on motorized wheelchairs, alleged injury that was both concrete and particularized and actual or imminent, as required for players to have standing to bring claims under Americans with Disabilities Act (ADA), Rehabilitation Act, and District of Columbia Human Rights Act against District of Columbia and lottery's executive director, where complaint stated that players often waited outside their most convenient lottery locations for long periods of time and had to ask for assistance from others in order to enter those locations, and that they faced increased risks to their personal safety because they had to wait in neighborhoods populated with prostitutes and drug addicts. *Equal Rights Ctr. v. District of Columbia*, 741 F.Supp.2d 273, 2010 U.S. Dist. LEXIS 106559 (2010).

Alleged injuries suffered by disabled District of Columbia lottery players, who depended on motorized wheelchairs, including not being able to access their preferred lottery locations,

were redressable, as required for players to have standing to bring claims under Americans with Disabilities Act (ADA), Rehabilitation Act, and District of Columbia Human Rights Act against District of Columbia and lottery's executive director; favorable finding for players would at least have effect of forcing defendants to increase accessibility of lottery, and although program with greater accessibility might not guarantee that players could participate in lottery without impediment at every lottery location, it would reduce if not eliminate players' need to subject themselves to safety risks or to rely on others for help at so many of the locations they wished to access. *Equal Rights Ctr. v. District of Columbia*, 741 F.Supp.2d 273, 2010 U.S. Dist. LEXIS 106559 (2010).

Sufficiency of evidence.

Evidence, in action against District of Columbia to recover for damage allegedly sustained as result of the alleged negligent maintenance and design of sewer grating, supported trial court's finding that District did not receive notice from plaintiff giving correct location of accident as required by statute governing actions against District for damage to person or property. D.C. Code §§ 12-309, 17-305(a). *Toomey v. District of Columbia*, 315 A.2d 565, 1974 D.C. App. LEXIS 368 (1974).

Timeliness of notice generally.

District of Columbia's Whistleblower Act required former District of Columbia school district employee to give notice to Mayor of approximate time, place, cause, and circumstances of injury or damage within six months of his injury in order to maintain an action under the Act; Act's notice requirement did not apply only to actions for unliquidated damages. *Winder v. Erste*, 566 F.3d 209, 2009 U.S. App. LEXIS 10296 (C.A.D.C. 2009).

Employees of District of Columbia Child and Family Services Agency failed to comply with statutory notice requirements for claims against District of Columbia, where employees notified Mayor's office of claims against Agency for violations of District of Columbia Human Rights Act after filing lawsuit. *Peters v. District of Columbia*, 2012 WL 1255139 (2012).

Notice to District of Columbia by female African-American teacher alleging employment discrimination on basis of race, color and gender was untimely under statute setting forth six-month notice requirement for persons considering personal injury or property damage claim against District of Columbia; although teacher filed her letter to District of Columbia only few days after deadline, six-month timeframe was to be read strictly and narrowly against her under District of Columbia law. *Bowers v. District of Columbia*, 2011 WL 2160945 (2011).

Student's common law claims against District of Columbia for negligent supervision, negligent hiring and retention, intentional infliction of emotional distress, and breach of fiduciary duty were barred by her failure to provide timely notice to District, compliance with which was mandatory prerequisite for everyone with tort claim against District of Columbia. *Blue v. Dist. of Columbia*, 850 F.Supp.2d 16, 2012 U.S. Dist. LEXIS 31460 (2012).

Discharged employee of the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) was required to provide notice of his claims against District of Columbia under District of Columbia Whistleblower Protection Act (DCWPA) within six months after alleged injury or damage was sustained. *Payne v. District of Columbia*, 741 F.Supp.2d 196, 2010 U.S. Dist. LEXIS 103039 (2010).

District of Columbia employees' claims against District of Columbia under the District of Columbia's Whistleblower Protection Act (DCWPA) were barred by statutory provision requiring six months notice prior to suing the District for unliquidated damages, where employees asserted to the court that they were informed by their former counsel that he had provided timely notice of their claims, but two years passed without their having provided any supplemental evidence to corroborate that they did in fact submit the necessary notices. *Booth v. District of Columbia*, 701 F.Supp.2d 73, 2010 U.S. Dist. LEXIS 33194 (2010).

Former arrestee's notice of common law tort claims against District of Columbia for alleged injury to property seized from his vehicle by police officers was untimely filed more than six months after date on which his property was allegedly destroyed, thus precluding arrestee's negligence and conversion claims. *Barnhardt v. District of Columbia*, 601 F.Supp.2d 324, 2009 U.S. Dist. LEXIS 19672 (2009), remanded by 425 Fed. Appx. 2, 2011 U.S. App. LEXIS 11462 (D.C. Cir. 2011).

Plaintiff's allegations that police officers repeatedly subjected him to threats of bodily injury, assaults, batter, illegal detainment, illegal searches and seizures, and violations of his right to speech, did not satisfy mandatory notice requirements for claims of unliquidated damages against District of Columbia; allegations that were not barred by six-month limitation period lacked requisite specificity of time and place to provide District with sufficient notice to investigate the claims. *Hall v. Lanier*, 583 F.Supp.2d 135, 2008 U.S. Dist. LEXIS 86719 (2008).

District of Columbia statute, precluding common law action for wrongful termination when notice of injury was not given within six months of occurrence, did not apply to claims that federal constitutional or statutory rights were

violated, made under §§ 1983. *Bowie v. Gonzales*, 433 F.Supp.2d 24, 2006 U.S. Dist. LEXIS 26159 (2006), affirmed by 642 F.3d 1122, 395 U.S. App. D.C. 301, 2011 U.S. App. LEXIS 12472, 112 Fair Empl. Prac. Cas. (BNA) 872 (2011).

Failure to provide notice of circumstances of injury or damage within six months, as required by District of Columbia statute, precluded claim of wrongful termination made by former employee of District Office of Inspector General, under District of Columbia common law. *Bowie v. Gonzales*, 433 F.Supp.2d 24, 2006 U.S. Dist. LEXIS 26159 (2006), affirmed by 642 F.3d 1122, 395 U.S. App. D.C. 301, 2011 U.S. App. LEXIS 12472, 112 Fair Empl. Prac. Cas. (BNA) 872 (2011).

Inmate's injury from the District of Columbia's failure to diagnose his condition was not his actual death, but, rather, when his condition worsened, and inmate's condition worsened when he was admitted to the emergency room, and because notice of injury was not provided to the District until six months and one day after date that inmate's injury worsened, notice of injury was untimely, and suit was barred pursuant to statute prohibiting suits against District of Columbia unless District is notified of injury within six months. *Brown v. District of Columbia*, 853 A.2d 733, 2004 D.C. App. LEXIS 385 (2004).

When circumstances require compliance with notice statute, which requires notice to be given to the District within six months after an injury in all actions seeking unliquidated damages against District for damages to person or property, a party seeking contribution from the District who fails to notify the District of his claim may not rely upon his employer's subsequent timely notice to bring a claim against the District. *Chidel v. Hubbard*, 840 A.2d 689, 2004 D.C. App. LEXIS 3 (2004).

Radiologist's employer's timely notice of claim against District, under statute that required notice to be given to the District within six months after an injury in all actions seeking unliquidated damages against District for damages to person or property, did not serve to retroactively notify the District of radiologist's intent to sue District in order to seek contribution in medical malpractice action. *Chidel v. Hubbard*, 840 A.2d 689, 2004 D.C. App. LEXIS 3 (2004).

Business entity's claim for damages against the District of Columbia, for its alleged negligence in the rupture of a water main pipe, was properly dismissed, as it was filed after expiration of the mandatory statutory notice period. *District of Columbia v. Arnold & Porter*, 756 A.2d 427, 2000 D.C. App. LEXIS 173 (2000).

Computation of statutory six-month period for providing written notice to District of Columbia as condition to maintaining action

against District for unliquidated damages excludes date of injury while including date notice is received. D.C. Code § 12-309. *De Kine v. District of Columbia*, 422 A.2d 981, 1980 D.C. App. LEXIS 388 (1980).

Where letter from counsel for operators of business of horse-drawn carriages for hire to District of Columbia, giving notice of claim for false arrest, specifically complained of arrest occurring "on or about October 31, 1974," and letter was received by District on May 2, 1975, letter was untimely notice of false arrest claim under statute. D.C. Code § 12-309. *De Kine v. District of Columbia*, 422 A.2d 981, 1980 D.C. App. LEXIS 388 (1980).

Dates on which plaintiffs were charged with driving while intoxicated (DWI) were not dates on which plaintiffs knew or should have known that they were allegedly injured by miscalibrated breath-test machines, and thus those dates did not trigger the notice requirement of the statute prohibiting the maintenance of any action against the District of Columbia for unliquidated damages unless certain written notice was provided to the mayor within six months after the injury was suffered, for purposes of the plaintiffs' negligence action against the District of Columbia; plaintiffs had no way of determining, on their charging dates, that they had allegedly been injured by the use of miscalibrated breath-test machines in their arrests. *Jones v. D.C.*, 139 WLR 2517 (Super. Ct. 2011).

District of Columbia did not show that the date of a public announcement of miscalibrated breath-test machines was a date on which plaintiffs who had been charged with driving while intoxicated (DWI) knew or should have known that they were allegedly injured by the miscalibrated machines, and thus the date did not trigger the notice requirement of the statute prohibiting the maintenance of any action against the District of Columbia for unliquidated damages unless certain written notice was provided to the mayor within six months after the injury was suffered, for purposes of the plaintiffs' negligence action against the District of Columbia; no information was provided as to which office of the District of Columbia issued the announcement, to whom the announcement was issued, what level of specificity the announcement provided as to the time period of the improper calibrations, the specific breath-test machines affected, or which criminal defendants had been affected by the improper calibrations. *Jones v. D.C.*, 139 WLR 2517 (Super. Ct. 2011).

An amendment that rendered a notice statute, specifically the statute prohibiting the maintenance of any action against the District of Columbia for unliquidated damages unless certain written notice was provided to the mayor within six months after the injury was

suffered or the damage was incurred, inapplicable to District of Columbia Whistleblower Protection Act (DCWPA) lawsuits applied retroactively to a DCWPA claim that was brought before the amendment; the notice statute was procedural in nature, and the District of Columbia Council viewed the elimination of the notice requirement as a change in procedural law. *Davis v. D.C.*, 138 WLR 2497 (Super. Ct. 2010).

Motorist's right to maintain an action against District of Columbia for contribution or indemnification would not mature or vest until a judgment was rendered against her and in favor of other motorist involved in automobile accident and, thus, provision of statute governing actions against District for unliquidated damages, requiring notice within six months after the injury or damage was sustained, had not begun to run. *Rodriguez v. Crowley*, 129 WLR 2453 (Super. Ct. 2001).

As a claim for rent abatement and related relief based on non-compliance with the D.C. Housing Regulations is a breach of contract claim, the District's motion to dismiss for defendant's asserted failure to give timely notice of suit to the District under this section was denied. *Lee v. District of Columbia*, 122 WLR 1957 (Super. Ct. 1994).

Tolling of time.

Record did not support pretrial detainee's contention that he suffered disorientation after his alleged assault by police officers which disabled him from notifying District of Columbia of details of incident as required by statute in order to preserve his negligent supervision claim, where detainee did not at any stage of proceedings offer affidavit regarding disorientation he claimed in his brief to Court of Appeals, much less any supporting evidence, such as doctor's report or hospital record showing severity and type of his injuries. D.C. Code 1981, § 12-309; 42 U.S.C. § 1983. *Hunter v. District of Columbia*, 943 F.2d 69, 1991 U.S. App. LEXIS 20108 (C.A.D.C. 1991).

Unlike a statute of limitations, which can be tolled through the discovery rule, District of Columbia's statute requiring notice, within six months after injury or damage was sustained, as prerequisite to filing tort action against District starts the clock at the instant an injury or damage is sustained. *Barnhardt v. District of Columbia*, 601 F.Supp.2d 324, 2009 U.S. Dist. LEXIS 19672 (2009), remanded by 425 Fed. Appx. 2, 2011 U.S. App. LEXIS 11462 (D.C. Cir. 2011).

Six-month statutory period for giving notice of claim against District of Columbia was not tolled on ground that plaintiff was non compos mentis since the time of the incident. D.C. Code 1981, § 12-309. *Gross v. District of Columbia*,

734 A.2d 1077, 1999 D.C. App. LEXIS 156 (1999).

Tolling principles applicable to statutes of limitations do not apply in cases involving statute requiring giving notice of claim against District within six months of injury. D.C. Code 1981, § 12-309. *Gross v. District of Columbia*, 734 A.2d 1077, 1999 D.C. App. LEXIS 156 (1999).

Six-month limitations period for giving written notice of claim against District of Columbia may not be equitably tolled. D.C. Code 1981, § 12-309. *Doe by Fein v. District of Columbia*, 697 A.2d 23, 1997 D.C. App. LEXIS 134 (1997).

Discovery rule does not apply to statute providing 6-month period within which plaintiff must notify Mayor of claim against District of Columbia; that 6-month period begins when alleged injury occurs, not when plaintiff has reason to believe that District is or may be liable. D.C. Code 1981, § 12-309. *District of Columbia v. Dunmore*, 662 A.2d 1356, 1995 D.C. App. LEXIS 148 (1995).

Waiver and estoppel.

District of Columbia and executive director of its lottery waived protection of statute requiring that a plaintiff give notice of action against District of Columbia by failing to raise that statute as defense during three and one-half years that elapsed between filing of initial

complaint and their motion to dismiss, in action brought by civil rights organization and disabled lottery players, alleging that they were denied access to lottery, in violation of Americans with Disabilities Act (ADA), Rehabilitation Act, and the District of Columbia Human Rights Act. *Equal Rights Ctr. v. District of Columbia*, 741 F.Supp.2d 273, 2010 U.S. Dist. LEXIS 106559 (2010).

District of Columbia waived right to assert affirmative defense, that prisoners' common law tort claims for assault and battery, intentional infliction of emotional distress, and negligence were barred for failure to give prior notice to District of Columbia of claims within timely manner, where municipality continued to litigate case without reiterating notice defense. *Anderson-Bey v. District of Columbia*, 466 F.Supp.2d 51, 2006 U.S. Dist. LEXIS 88891 (2006).

District of Columbia was not estopped from asserting that motorist's claim against it for personal injury sustained in automobile collision involving automobile owned by the District and operated by one of its employees was barred due to motorist's failure to give timely notice of claim absent waiver by the District of the notice requirement. D.C. Code § 12-309. *Miller v. Spencer*, 330 A.2d 250, 1974 D.C. App. LEXIS 339 (1974).

§ 12-310. Actions arising out of death or injury caused by defective or unsafe improvements to real property.

(a)(1) Except as provided in subsection (b), any action —

(A) to recover damages for —

(i) personal injury,

(ii) injury to real or personal property, or

(iii) wrongful death,

resulting from the defective or unsafe condition of an improvement to real property, and

(B) for contribution or indemnity which is brought as a result of such injury or death, shall be barred unless in the case where injury is the basis of such action, such injury occurs within the ten-year period beginning on the date the improvement was substantially completed, or in the case where death is the basis of such action, either such death or the injury resulting in such death occurs within such ten-year period.

(2) For purposes of this subsection, an improvement to real property shall be considered substantially completed when —

(A) it is first used, or

(B) it is first available for use after having been completed in accordance with the contract or agreement covering the improvement, including any agreed changes to the contract or agreement, whichever occurs first.

- (b) The limitation of actions prescribed in subsection (a) shall not apply to —
- (1) any action based on a contract, express or implied, or
 - (2) any action brought against the person who, at the time the defective or unsafe condition of the improvement to real property caused injury or death, was the owner of or in actual possession or control of such real property, or
 - (3) any manufacturer or supplier of any equipment or machinery or other articles installed in a structure upon real property, or
 - (4) any action brought by the District of Columbia government.

(Oct. 27, 1972, 86 Stat. 1275, Pub. L. 92-579, § 1(a); 1973, Ed., § 12-310; Feb. 28, 1987, D.C. Law 6-202, § 4, 34 DCR 527.)

Cross references. — Negligence causing death, limitation of actions, see § 16-2702.

Prior Codifications. — 1981 Ed., § 12-310.

Legislative history of Law 6-202. — For legislative history of D.C. Law 6-202, see Historical and Statutory Notes following § 12-311.

CASE NOTES

ANALYSIS

Due process.
Improvements.
In general.
Persons protected.
Standing to challenge validity.
Validity.

Due process.

Retroactive amendment of statute of repose to exclude manufacturer of asbestos-containing products did not violate due process despite manufacturer's contention that statute of repose was by nature substantive and that retroactive amendment was thus improper. D.C. Code 1981, § 12-310; U.S. Const. Amends. 5, 14. *Wesley Theological Seminary of United Methodist Church v. United States Gypsum Co.*, 876 F.2d 119, 1989 U.S. App. LEXIS 6896 (C.A.D.C. 1989), writ of certiorari denied by 494 U.S. 1003, 110 S. Ct. 1296, 108 L. Ed. 2d 473, 1990 U.S. LEXIS 1154, 58 U.S.L.W. 3545 (1990).

Improvements.

Elevators were an integral part of multi-story building, so that work performed on elevator car constituted an "improvement" under District of Columbia ten-year statute of repose, governing claims involving personal injury caused by defective or unsafe improvements to real property. D.C. Code 1981, § 12-310. *Britt v. Schindler Elevator Corp.*, 637 F. Supp. 734, 1986 U.S. Dist. LEXIS 24307 (1986).

Heating system built into commercial property, including component safety switches, was an "improvement to real property" within the meaning of statute of repose, D.C. Code 1981, § 12-310, barring actions arising out of death or injury caused by such improvements after

ten years. *J.H. Westerman Co. v. Fireman's Fund Ins. Co.*, 499 A.2d 116, 1985 D.C. App. LEXIS 509 (1985).

In general.

Negligence and strict liability claims of elevator passenger, who sustained injuries in 1983 when elevator car allegedly dropped several inches as she was entering car with wheelchair, were barred by District of Columbia ten-year statute of repose against contractor, whose predecessor in interest had contracted with federal government in 1959 to "modernize" the car, in that contractor did not have any contact with car within ten years of date of passenger's injuries. D.C. Code 1981, § 12-310. *Britt v. Schindler Elevator Corp.*, 637 F. Supp. 734, 1986 U.S. Dist. LEXIS 24307 (1986).

Phrase "any action," used in District of Columbia ten-year statute of repose, governing claims involving personal injury caused by defective or unsafe improvements to real property, covered negligence and products liability claims. D.C. Code 1981, § 12-310. *Britt v. Schindler Elevator Corp.*, 637 F. Supp. 734, 1986 U.S. Dist. LEXIS 24307 (1986).

Ten-year statute of repose governing action arising out of death or injury caused by defective or unsafe improvements to real property did not apply to property owner's claim against renovation contractor for latent defects in property renovation. *Mazza v. Housecraft LLC*, 18 A.3d 786, 2011 D.C. App. LEXIS 215 (2011), vacated by, appeal dismissed by 22 A.3d 820, 2011 D.C. App. LEXIS 374 (D.C. 2011).

The District of Columbia government may not change or apply statutes of limitation or repose (D.C. Law 6-202) retroactively in order to extricate itself from litigation already pending on the effective date of the change. District

of *Columbia v. Owens-Corning Fiberglass Corp.*, 115 WLR 1905 (Super. Ct. 1987).

Persons protected.

Claims of rail passengers and estates of deceased rail passengers against provider of components used in electronic train control system in Washington Metropolitan Area Transit Authority (WMATA) were precluded under District of Columbia's 10-year statute of repose barring personal injury or wrongful death claims arising from defective design, inasmuch as claims were brought against provider in its capacity as designer of system; fact that provider was both designer and manufacturer of system did not preclude protection for provider's design activities under statute of repose. *Jenkins v. Wash. Metro. Area Transit Auth.* (In re Fort Totten Metrorail Cases), 793 F.Supp.2d 133, 2011 U.S. Dist. LEXIS 68913 (2009).

Statute of repose protecting design professionals from actions for defective improvements to real property did not protect prior owners of land containing leaking underground storage tanks (USTs) from liability for remediation costs; statute expressly excluded owners of property at time of injury and was intended to protect only professionals without control over owners whose negligence could cause unsafe condition to develop. D.C. Code 1981, § 12-310(a)(1)(B), (b)(2). 325-343 E. 325-343 E. 56th St. Corp. v. Mobil Oil Corp., 906 F. Supp. 669, 1995 U.S. Dist. LEXIS 16895 (1995).

Contractor, which modernized elevators in state apartment building pursuant to contract with federal government, was entitled to protection of District of Columbia ten-year statute of repose, governing claims involving personal injury caused by defective or unsafe improvements to real property. D.C. Code 1981, § 12-310. *Britt v. Schindler Elevator Corp.*, 637 F. Supp. 734, 1986 U.S. Dist. LEXIS 24307 (1986).

Manufacturer of safety switch included in heating system built into commercial property was within the class of persons protected by statute of repose, D.C. Code 1981, § 12-310, barring actions for death or injury caused by defective or unsafe improvements to real property more than ten years after such improvement. *J.H. Westerman Co. v. Fireman's Fund*

Ins. Co., 499 A.2d 116, 1985 D.C. App. LEXIS 509 (1985).

Standing to challenge validity.

Elevator passenger, who sustained injuries when elevator car allegedly dropped several inches as she entered car with wheelchair, lacked standing, on her own behalf or on behalf of owners or actual possessors of real property, to challenge classifications made by District of Columbia ten-year statute of repose, which covered construction professionals but did not cover owners and actual possessors of real property. D.C. Code 1981, § 12-310; U.S.C. Const.Amend. 5, 14. *Britt v. Schindler Elevator Corp.*, 637 F. Supp. 734, 1986 U.S. Dist. LEXIS 24307 (1986).

Exterminator who was injured in fall through grate while performing pest control inspection at hotel had standing to challenge constitutionality of statute of repose which was available to contractor, but not owner, as exterminator had sufficiently concrete interest in outcome of suit to make a case or controversy and intensity of exterminator's interest in outcome of constitutional challenge was sufficient to assure that she was appropriate proponent of constitutional claim. U.S.C. Const.Amend. 5; D.C. Code 1981, § 12-310. *Sandoe v. Lefta Assocs.*, 559 A.2d 732, 1988 D.C. App. LEXIS 236 (1988).

Validity.

District of Columbia ten-year statute of repose was rationally related to a legitimate state purpose of encouraging contractors and other construction professionals to experiment and upgrade their designs and materials and, thus, did not violate equal protection principles by excluding from its coverage owners or actual possessors of real property. D.C. Code 1981, § 12-310; U.S. Const.Amend. 5, 14. *Britt v. Schindler Elevator Corp.*, 637 F. Supp. 734, 1986 U.S. Dist. LEXIS 24307 (1986).

Ten-year statute of repose did not violate due process and equal protection in affording protection to construction professionals, but not to owners and occupiers of land, as statute was rationally related to interest in providing construction professionals with finality as to their work. U.S.C. Const.Amend. 5; D.C. Code 1981, § 12-310. *Sandoe v. Lefta Assocs.*, 559 A.2d 732, 1988 D.C. App. LEXIS 236 (1988).

§ 12-311. Actions arising out of death or injury caused by exposure to asbestos.

(a) In any civil action for injury or illness based upon exposure to asbestos, the time for the commencement of the action shall be the later of the following:

- (1) Within one year after the date the plaintiff first suffered disability;
- (2) Within one year after the date the plaintiff either knew, or through the

exercise of reasonable diligence should have known, that the disability was caused or contributed to by the exposure; or

(3) Three years from the time the right to maintain the action accrues.

(b) "Disability" as used in subsection (a) of this section means the loss of time from work as a result of the exposure that precludes the performance of the employee's regular occupation.

(c) In an action for the wrongful death of any plaintiff's decedent, based upon exposure to asbestos, the time for commencement of an action shall be the later of the following:

(1) Within one year from the date of the death of the plaintiff's decedent; or

(2) Within one year from the date the plaintiff first knew, or through the exercise of reasonable diligence should have known, that the death was caused or contributed to by the exposure.

(Feb. 28, 1987, D.C. Law 6-202, § 5, 34 DCR 527; June 3, 2011, D.C. Law 18-377, § 3, 58 DCR 1174.)

Prior Codifications. — 1981 Ed., § 12-311.

Effect of amendments. — D.C. Law 18-377, in subsec. (a), deleted "or" from the end of par. (1), substituted "; or" for a period the end of par. (2), and added par. (3).

Temporary Amendment of Section. — Section 2 of D.C. Law 18-297 added subsec. (d) to read as follows:

"(d) A plaintiff in an asbestos-injury action shall have the longer of the limitation period prescribed by subsection (a) of this section or the limitation period prescribed by § 12-301(8)."

Section 4(b) of D.C. Law 18-297 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) amendment of section, see § 2 of Asbestos Statute of Limitations Clarification Emergency Act of 2010 (D.C. Act 18-585, October 20, 2010, 57 DCR 10134).

For temporary (90 day) amendment of section, see § 503 of Public Safety Legislation Sixty-Day Layover Emergency Amendment Act of 2010 (D.C. Act 18-693, January 18, 2011, 58 DCR 640).

For temporary (90 day) amendment of sec-

tion, see § 503 of Public Safety Legislation Sixty-Day Layover Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-45, April 20, 2011, 58 DCR 3701).

Legislative history of Law 6-202. — Law 6-202, the "District of Columbia Statute of Limitations Amendment Act of 1986," was introduced in Council and assigned Bill No. 6-510, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 25, 1986 and December 16, 1986, respectively. Signed by the Mayor on January 8, 1987, it was assigned Act No. 6-261 and transmitted to both Houses of Congress for its review.

Legislative history of Law 18-377. — Law 18-377, the "Criminal Code Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-963, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on December 7, 2010, and December 21, 2010, respectively. Signed by the Mayor on February 2, 2011, it was assigned Act No. 18-722 and transmitted to both Houses of Congress for its review. D.C. Law 18-377 became effective on June 3, 2011.

CASE NOTES

ANALYSIS

District immunity to limitations.

In general.

Purpose.

Retroactive operation.

District immunity to limitations.

Under common-law principle of "nullum tem-

pus occurrit regi" ("no time runs against the sovereign"), the District of Columbia enjoys common-law "municipal immunity" from effects of statutes of limitations and repose when suing in its municipal capacity to vindicate public rights. *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 1989 D.C. App. LEXIS 164 (1989), writ of certiorari denied by

498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173, 1990 U.S. LEXIS 4857, 59 U.S.L.W. 3250 (1990).

Since Congress is sovereign in District of Columbia, it enjoys usual sovereign immunities, including benefit of common-law principle of "nullum tempus occurrit regi" ("no time runs against the sovereign"). *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 1989 D.C. App. LEXIS 164 (1989), writ of certiorari denied by 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173, 1990 U.S. LEXIS 4857, 59 U.S.L.W. 3250 (1990).

For purpose of municipal immunity against running of statutes of limitations and repose, which inheres only when District of Columbia brings suit seeking to vindicate public rights and involving performance of public functions, District of Columbia does not perform "public function" every time it sues for money; rather, where District acquires right of action directly related to its duty to perform service to public, or to vindicate overwhelmingly public interest or right, suit to recover money damages to enable District to perform that service is public rather than proprietary. *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 1989 D.C. App. LEXIS 164 (1989), writ of certiorari denied by 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173, 1990 U.S. LEXIS 4857, 59 U.S.L.W. 3250 (1990).

District of Columbia's tort suit to recover removal costs and other damages associated with presence of asbestos-containing products in public buildings was suit to vindicate "public right" and involved performance of "public function" such that district enjoyed common-law municipal immunity from effects of statutes of limitations and repose. *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 1989 D.C. App. LEXIS 164 (1989), writ of certiorari denied by 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173, 1990 U.S. LEXIS 4857, 59 U.S.L.W. 3250 (1990).

While "sovereign immunity" is immunity a political community or institution enjoys by right of its political status, and not merely by virtue of legal function it performs at given time, and may be reclaimed by sovereign even if waived by permission or by statute, derivative immunity enjoyed by municipality ("municipal immunity") inheres in it only when it performs sovereign function, such as vindication of public right, and then only with reference to function performed. *District of Columbia v. Owens-Corning Fiberglas Corp.*, 572 A.2d 394, 1989 D.C. App. LEXIS 164 (1989), writ of certiorari denied by 498 U.S. 880, 111 S. Ct. 213, 112 L. Ed. 2d 173, 1990 U.S. LEXIS 4857, 59 U.S.L.W. 3250 (1990).

In general.

Statute of limitations governing actions

based on exposure to asbestos which was adopted in 1987, under which plaintiff has one year from later of date of disability, or date on which he knew or should have known that asbestos exposure caused disability, to bring action, did not apply to action brought in November 1988 by worker who first suffered disability in April 1986 and learned of cause in January 1987, and action was instead governed by general three-year limitations period applicable prior to adoption of statute. D.C. Code 1981, §§ 12-301(8), 12-311. *Owens-Corning Fiberglas Corp. v. Henkel*, 689 A.2d 1224, 1997 D.C. App. LEXIS 30 (1997).

Purpose.

General purpose underlying statute establishing limitations period for actions based on exposure to asbestos was to expand period of time in which plaintiffs could sue to recover for asbestos injuries, not to contract it. D.C. Code 1981, § 12-311. *Owens-Corning Fiberglas Corp. v. Henkel*, 689 A.2d 1224, 1997 D.C. App. LEXIS 30 (1997).

The legislative history demonstrates that the intent behind enactment was to expand the period of time in which plaintiffs could sue to recover for asbestos-related injury or illness. And both that legislative history and the plain meaning of subsection (b) demonstrate just as clearly that subsection (a) was directed only at employees who are disabled from work because of exposure to asbestos, and not to the broader, general population of potential victims of such illness or injury. Defendants' reading which would give nonemployee victims of an asbestos illness or injury less time within which to sue than they previously had under § 12-301 would contravene the intent of the legislature and the plain meaning of subsection (b) of the statute, and must be rejected. *Gwyer v. Celotex Corp.*, 117 WLR 2617 (Super. Ct. 1989).

Retroactive operation.

Statutory provision under which newly adopted limitations period for actions based on exposure to asbestos applied to actions pending on July 1, 1986, or filed after that date was designed to make liberalizing provisions of new limitations period applicable as soon as possible, and to allow more generous statute of limitations to apply to actions previously filed, or which might be filed, even if actions were potentially subject to dismissal as time barred under prior statute; legislature could not have intended to direct retroactive dismissal of actions which had already been filed, and which were timely when filed, on basis that they were untimely. D.C. Code 1981, §§ 6-202, 12-311. *Owens-Corning Fiberglas Corp. v. Henkel*, 689 A.2d 1224, 1997 D.C. App. LEXIS 30 (1997).

TITLE 13. PROCEDURE GENERALLY.

Chapter

1. Rules of Procedure.
3. Process and Parties.
4. Civil Jurisdiction and Service Outside the District of Columbia.
- 4A. Interstate Depositions and Discovery; Uniform Act.
5. Counterclaims.
7. Trial.

CHAPTER 1. RULES OF PROCEDURE [REPEALED].

Sec.

13-101. [Repealed].

§ 13-101. Prescription of rules by courts. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 142(1)(A).)

Prior Codifications. — 1981 Ed., § 13-101.

Title 13 of the District of Columbia Official Code.

Editor's notes. — Section 25(a) of D.C. Law 15-354 provided that Title 13 is designated

CHAPTER 3. PROCESS AND PARTIES.

Subchapter I. General Provisions

Sec.

13-301. Courts to which applicable.

13-302. Service by marshal.

13-302.01. Service by Metropolitan Police Department.

13-303. [Repealed].

Subchapter II. Service of Process; Legal Representatives

13-331. Service under other laws and rules of court.

13-332. Service on infants; appointment and compensation of guardian and attorney.

13-333. Service on incompetent persons.

Sec.

13-334. Service on foreign corporations.

13-335. Service by publication on domestic or foreign corporations.

13-336. Service by publication on nonresidents, absent defendants, and unknown heirs or devisees.

13-337. Personal service outside District in lieu of publication.

13-338. Prerequisites for order of publication.

13-339. Form of order of publication.

13-340. Manner of publication; mailing of copy; default; appointment and compensation of guardian and attorney.

13-341. Service by publication on persons unknown to be living or dead and on unknown heirs and devisees.

Subchapter I. General Provisions.

§ 13-301. Courts to which applicable.

Except as otherwise specifically provided by law or rules of court, this chapter applies to the District of Columbia courts.

(Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 142(2).)

Prior Codifications. — 1981 Ed., § 13-301. 1973 Ed., § 13-301.

§ 13-302. Service by marshal.

Subject to the provisions of law or rules of court for service by other persons, the United States marshal for the District of Columbia or his deputy shall serve the process of the District of Columbia Court of Appeals, and the Superior Court of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 142(3).)

Prior Codifications. — 1981 Ed., § 13-302. 1973 Ed., § 13-302.

CASE NOTES

In general.

Defendants' 15-year-old son, conceded to be of average intelligence, was "per se" a person of suitable age and discretion for the purpose of receiving process, despite defendants' claim that their son was unaccustomed to or unfamiliar

with legal proceedings and did not understand the importance of the papers left with him. D.C. Code General Sessions Court Rules, § 1, rule 4(c) (1). *Day v. United Sec. Corp.*, 272 A.2d 448, 1970 D.C. App. LEXIS 375 (App. 1970).

§ 13-302.01. Service by Metropolitan Police Department.

(a) The Metropolitan Police Department shall execute, upon request, a

bench warrant in any case in which paternity establishment or child support is at issue.

(b) The Metropolitan Police Department shall serve civil process in any case in which paternity establishment or child support is at issue and shall serve the process at the request of the IV-D agency in any IV-D case. In a non-IV-D case, a judicial officer may order the Metropolitan Police Department to serve process pursuant to this section or to accompany a private process server upon a finding of danger to the process server or a finding that the respondent is evading service. The affidavit of a private process server shall be considered sufficient evidence for a finding of danger or evasion of service.

(c) A special unit that consists of at least 4 police officers shall be established for the exclusive purpose of performing the duties enumerated in section 13-302.01(a) and (b).

(d) The IV-D agency shall provide funds to the Metropolitan Police Department to pay for the full cost, including administrative costs, of providing the services in section 13-302.01(a) and (b) in all IV-D cases.

(June 18, 1991, D.C. Law 9-5, § 3(b), 38 DCR 2717; Aug. 17, 1991, D.C. Law 9-39, § 3(b), 38 DCR 4970.)

Prior Codifications. — 1981 Ed., § 13-302.1.

Legislative history of Law 9-5. — Law 9-5, the “District of Columbia Paternity Establishment Temporary Act of 1991,” was introduced in Council and assigned Bill No. 9-142. The Bill was adopted on first and second readings on March 5, 1991, and April 9, 1991, respectively. Signed by the Mayor on April 26, 1991, it was assigned Act No. 9-20 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-39. — Law 9-39, the “District of Columbia Paternity Estab-

lishment Act of 1991,” was introduced in Council and assigned Bill No. 9-2, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-76 and transmitted to both Houses of Congress for its review.

Editor’s notes. — Section 25(b) of D.C. Law 15-354 provided that the section designation of § 13-302.1 of the District of Columbia Official Code is redesignated as § 13-302.01.

§ 13-303. Service or execution on Sunday. [Repealed].

Repealed.

(June 18, 1991, D.C. Law 9-5, § 3(c), 38 DCR 2717; Aug. 17, 1991, D.C. Law 9-39, § 3(c), 38 DCR 4970.)

Prior Codifications. — 1981 Ed., § 13-303.

Legislative history of Law 9-5. — For legislative history of D.C. Law 9-5, see Historical and Statutory Notes following § 13-302.01.

Legislative history of Law 9-39. — For legislative history of D.C. Law 9-39, see Historical and Statutory Notes following § 13-302.01.

Subchapter II. Service of Process; Legal Representatives.

§ 13-331. Service under other laws and rules of court.

This chapter does not limit or affect the right to serve process in any other manner now or hereafter required or permitted by:

(1) other law, including Chapter 4 of this title or, any other provisions of this Code; or

(2) rule of court.

(Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 142(4).)

Cross references. — Attachment and garnishment proceedings, service of process in proceedings, see § 16-502.

Corporations, service of process upon, see § 29-612.

Insurance companies, service of process upon, see §§ 31-4323 and 31-2502.23.

Prior Codifications. — 1981 Ed., § 13-331. 1973 Ed., § 13-331.

§ 13-332. Service on infants; appointment and compensation of guardian and attorney.

(a) When an infant is a party defendant in an action, the summons and complaint shall be served upon him personally and, when he is under 16 years of age, upon the person with whom he resides, if within the District. The infant shall be produced in court unless, for cause shown, the court dispenses with his appearance. The provisions of rules of court regarding guardians ad litem apply, and whenever in the judgment of the court the interests of an infant defendant require it, the court shall assign an attorney to represent the infant whose compensation shall be paid by the plaintiff, or out of the estate of the infant, at the discretion of the court.

(b) An infant who secretes himself or evades service of process may be proceeded against as if he were a nonresident.

(c) Whoever secretes an infant against whom process has issued, so as to prevent service of the process, or prevents his appearance in court, is liable to attachment and punishment as for contempt.

(Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1.)

Cross references. — Condemnation of insanitary buildings, appointment of guardian ad litem in proceedings, see § 6-909.

Section references. — This section is referred to in § 13-340.

Prior Codifications. — 1981 Ed., § 13-332. 1973 Ed., § 13-332.

CASE NOTES

In general.

If defendant was infant, service by leaving copy of complaint and summons with person of suitable age at his usual place of abode was improper, and default judgment entered against defendant for whom no guardian ad litem had been appointed was void; and verified affidavit, accompanying motion to set aside

default judgment and giving birth date which, if accurate, established defendant's infancy, compelled inquiry as to actual age of defendant. D.C. Code 1961, § 13-105; Municipal Court Rules, § 1 rule 39A(e). *Hamer v. Eastern Credit Asso.*, 192 A.2d 127, 1963 D.C. App. LEXIS 248 (App. 1963).

§ 13-333. Service on incompetent persons.

When a person non compos mentis is a party defendant in an action, process shall be served upon him personally, if within the District, and upon his committee, if there is one within the District.

(Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1.)

Cross references. — Condemnation of insanitary buildings, appointment of guardian ad litem in proceedings, see § 6-909.

Prior Codifications. — 1981 Ed., § 13-333. 1973 Ed., § 13-333.

§ 13-334. Service on foreign corporations.

(a) In an action against a foreign corporation doing business in the District, process may be served on the agent of the corporation or person conducting its business, or, when he is absent and can not be found, by leaving a copy at the principal place of business in the District, or, where there is no such place of business, by leaving a copy at the place of business or residence of the agent in the District, and that service is effectual to bring the corporation before the court.

(b) When a foreign corporation transacts business in the District without having a place of business or resident agent therein, service upon any officer or agent or employee of the corporation in the District is effectual as to actions growing out of contracts entered into or to be performed, in whole or in part, in the District of Columbia or growing out of any tort committed in the District.

(Dec. 23, 1963, 77 Stat. 513, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 13-334. 1973 Ed., § 13-334.

CASE NOTES

ANALYSIS

Agents.

Doing business in District.

—In general.

Due process.

In general.

Jurisdiction.

Practice and procedure, generally.

Service of process.

Subsidiaries.

Subsidiaries, doing business in District.

—Distinguished from transacting business, doing business in district.

Summary judgment.

Transacting business in District.

Agents.

To determine if party is agent for jurisdictional purposes, court looks to entire relationship for evidence of mutual consent and sufficient degree of control exercised by principal. *Richard v. Bell Atl. Corp.*, 946 F. Supp. 54, 1996 U.S. Dist. LEXIS 17637 (1996).

Individual was proper party to receive service of process on foreign corporation where, as agent for such corporation, individual was empowered to bind corporation in sale of stock, held himself out as managing director of corporation, and accepted funds from investor to purchase stock in corporation. D.C. Code § 13-

334(a); D.C. Code SCR, Civil Rule 12(b)(4). *Price v. Griffin*, 359 A.2d 582, 1976 D.C. App. LEXIS 305 (1976).

Doing business in District.

— In general.

District of Columbia law permits courts to exercise general jurisdiction over a foreign corporation as to claims not arising from the corporation's conduct in the District, if the corporation is doing business in the District. *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 2002 U.S. App. LEXIS 11674 (C.A.D.C. 2002).

Where the basis for obtaining jurisdiction over a foreign corporation is the District of Columbia statute authorizing general jurisdiction based on a corporation doing business in the District, a plaintiff who serves a foreign corporation by mail outside the District is foreclosed from benefitting from the jurisdictional protection of the statute. *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 2002 U.S. App. LEXIS 11674 (C.A.D.C. 2002).

Virginia real estate broker's mailing of copy of summons and complaint to securities broker's corporate headquarters in Nebraska did not establish jurisdiction of District of Columbia courts under District statute authorizing general jurisdiction based on corporation doing

business in District, notwithstanding District of Columbia Superior Court rule that appeared to permit service upon corporations by mail. *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 2002 U.S. App. LEXIS 11674 (C.A.D.C. 2002).

International Criminal Police Organization, which conveyed a message from its United States liaison, United States National Central Bureau, to German official resulting in wrongful detention of plaintiff, was not “doing business” in District of Columbia for jurisdictional purposes; record did not support contention that National Central Bureau acted as an agent of Interpol in sending and receiving the law enforcement messages. 22 U.S.C. § 263a; D.C. Code § 13-334. *Sami v. United States*, 617 F.2d 755, 1979 U.S. App. LEXIS 9335 (C.A.D.C. 1979).

Delaware corporation which produced, refined and sold oil and gas in Saudi Arabia was not doing business within District of Columbia where it maintained an office which was used solely for purpose of maintaining continuing relationships with and exchanging information with state department, other federal agencies, diplomatic missions and public and private educational and international organizations, and corporation could not be sued within District for personal injuries sustained in Saudi Arabia. D.C. Code 1961, § 13-334; 18 U.S.C. § 1391(c). *Fandel v. Arabian American Oil Co.*, 345 F.2d 87, 1965 U.S. App. LEXIS 6425 (C.A.D.C. 1965).

Nonresident pain pump manufacturer was “doing business” within District of Columbia, and its business contacts within District were “continuous and systematic,” and thus District of Columbia district court had general personal jurisdiction over manufacturer under District of Columbia’s long-arm statute in shoulder surgery patient’s products liability action against manufacturer, where manufacturer had established and benefited from partnership with hospital in District, devoted entire sales region to sales in Washington, D.C., profited from sales of its pain pumps to Washington, D.C. hospitals, and obtained expert medical consulting services of Washington, D.C. medical facilities and physicians. *Marshall v. I-Flow, LLC*, 2012 WL 1372103 (2012).

Virginia-based competitor’s actions did not constitute the kind of “continuous and systematic” business contact necessary to establish that it was “doing business” in the District of Columbia in such a manner that it would expect to be hauled into court in the District for its actions; competitor of restaurant chain conducted no business on or through its informational websites which were accessible from the District, and competitor’s consideration of a possible business expansion into the District

consisted of one isolated phone call. *Marshall v. I-Flow, LLC*, 2012 WL 1372103 (2012).

German restaurant corporation was not “doing business” within District of Columbia forum, for purposes of court’s general personal jurisdiction over corporation under District of Columbia long-arm statute; although corporation maintained licensor-licensee relationship with American entity, corporation never had any assets or operations in District or anywhere else in United States, nor did it have ownership interest in any business entity formed in District of Columbia or anywhere else in United States. *Rundquist v. Vapiano SE*, 798 F.Supp.2d 102, 2011 U.S. Dist. LEXIS 78781 (2011).

In personal injury action in federal court in District of Columbia against automobile manufacturer for damages resulting from automobile accident in South Africa, manufacturer, a Japanese corporation whose principal place of business was in Japan, did not do business in District as would subject manufacturer to personal jurisdiction under District’s provision for service of foreign corporations, where manufacturer was not licensed to do business in District, manufacturer did not own or lease real estate and did not maintain sales force or any other agents or representatives in District, manufacturer did not pay taxes to District, none of manufacturer’s designing or manufacturing took place in District, manufacturer did not target marketing at District residents, and manufacturer did not ship any vehicles for purposes of sale directly into District. *Miller v. Toyota Motor Corp.*, 620 F.Supp.2d 109, 2009 U.S. Dist. LEXIS 46605 (2009).

Under District of Columbia law, courts may exercise general jurisdiction over a foreign corporation as to claims not arising from the corporation’s conduct in the District if the corporation is doing business in the District; the reach of doing business jurisdiction is co-extensive with the reach of constitutional due process, which makes general jurisdiction permissible if the defendant’s business contacts with the forum are continuous and systematic. *Miller v. Toyota Motor Corp.*, 620 F.Supp.2d 109, 2009 U.S. Dist. LEXIS 46605 (2009).

Foreign corporation’s interactive website, along with single, short-lived, and since-terminated relationship with customer in District of Columbia, did not constitute doing business in District of Columbia, and thus Court could not exercise general personal jurisdiction over it under District of Columbia statute that governed service on foreign corporations; although website provided demonstration of services provided by corporation, website itself did not provide service in that it was merely informational. *FC Inv. Group LC v. IFX Mkts., Ltd.*, 479 F.Supp.2d 30, 2007 U.S. Dist. LEXIS 7919 (2007), affirmed by 529 F.3d 1087, 381 U.S.

App. D.C. 383, 2008 U.S. App. LEXIS 13312 (2008).

District court lacked general personal jurisdiction over energy company sued by municipalities alleging illegal agreement to artificially inflate price of natural gas, pursuant to District of Columbia law; municipalities failed to provide any information showing what, if any, business company conducted in its office in District of Columbia. *City of Moundridge v. Exxon Mobil Corp.*, 471 F.Supp.2d 20, 2007 U.S. Dist. LEXIS 2022 (2007).

Anthrax vaccine manufacturer's contacts with the District of Columbia were not sufficiently continuous and systematic to satisfy the due process requirements of general jurisdiction, and thus, federal court located in District of Columbia did not have general jurisdiction over Michigan manufacturer in products liability action brought against manufacturer by consumer, who alleged that he suffered serious ailments from anthrax inoculations he received while in military; manufacturer did not maintain office, mailing address, telephone, or agent for service of process in District, and manufacturer had never marketed or sold vaccine for distribution or use by the general public and had never sold vaccine to resident of the District. *Savage v. Biopart, Inc.*, 460 F.Supp.2d 55, 2006 U.S. Dist. LEXIS 78144 (2006).

Website that allowed 25 free music downloads before charging customers for additional downloads could be found to be "conducting business" in District of Columbia, for purpose of determining whether federal court had personal jurisdiction over nonresident website operator in infringement action brought by record companies, regardless of whether any District residents had in fact paid for downloads; website's marketing technique constituted active solicitation. *Arista Records, Inc. v. Sakfield Holding Co.*, 314 F.Supp.2d 27, 2004 U.S. Dist. LEXIS 7023 (2004).

Reach of "doing business" jurisdiction under District of Columbia long-arm statute is coextensive with reach of constitutional due process. *Arista Records, Inc. v. Sakfield Holding Co.*, 314 F.Supp.2d 27, 2004 U.S. Dist. LEXIS 7023 (2004).

Federal district court sitting in District of Columbia did not have general jurisdiction over nonresident natural gas pipeline operator sued for antitrust violations, under District law, based on maintenance of Internet website used sporadically by three District-based companies to schedule movements of natural gas; usage of website was insufficient to constitute "continuous and systematic general business contacts" required for jurisdiction. *Atlantigas Corp. v. Nisource, Inc.*, 290 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 18484 (2003).

Under laws of District of Columbia, courts may exercise general jurisdiction over foreign

corporation as to claims not arising from corporation's conduct in District, if corporation is doing business in District. *Diamond Chem. Co. v. Atofina Chems., Inc.*, 268 F.Supp.2d 1, 2003 U.S. Dist. LEXIS 10549 (2003).

Physician's vague and unsupported statements, that New York hospital where she trained defendant conducted business and/or performed services in its regular course of business and maintained close communications with Secretary of Health and Human Services and readily supplied and requested information from North Dakota and West Virginia medical boards, were insufficient to satisfy constitutional requirements of due process for exercising jurisdiction under District of Columbia's general statute authorizing jurisdiction over foreign corporations; there was no evidence that hospital engaged in any activity at all in District of Columbia, solicited business within District of Columbia, or had any contacts within District of Columbia. *De Jesus Baltierra v. W. Va. Bd. of Med.*, 253 F.Supp.2d 9, 2003 U.S. Dist. LEXIS 5171 (2003), affirmed by 2004 U.S. App. LEXIS 11279 (D.C. Cir. June 7, 2004).

West Virginia Board of Medicine's motion to dismiss physician's original complaint for lack of personal jurisdiction, insufficiency of service of process, and failure to state a claim on which relief could be granted, or alternatively, to dismiss for improper venue or to transfer the case to the United States District Court for the Southern District of West Virginia became moot when physician filed her first amended complaint. *De Jesus Baltierra v. W. Va. Bd. of Med.*, 253 F.Supp.2d 9, 2003 U.S. Dist. LEXIS 5171 (2003), affirmed by 2004 U.S. App. LEXIS 11279 (D.C. Cir. June 7, 2004).

For federal court to have general jurisdiction over foreign corporation, pursuant to District of Columbia law permitting jurisdiction over foreign corporation doing business in district, corporation must have continuing corporate presence in district directed at advancing corporation's objectives. D.C. Code 1981, § 13-334(a). *Richard v. Bell Atl. Corp.*, 946 F. Supp. 54, 1996 U.S. Dist. LEXIS 17637 (1996).

In addition to District of Columbia long-arm statute, District Court for the District of Columbia can obtain jurisdiction over foreign corporation doing business in district pursuant to broader "doing business" statute. D.C. Code 1981, §§ 13-334, 13-423. *Ross v. Product Dev. Corp.*, 736 F. Supp. 285, 1989 U.S. Dist. LEXIS 11858 (1989).

Defendant foreign corporation's business links with District of Columbia were sufficient to constitute "doing business," within meaning of statute conferring jurisdiction; corporation had been authorized for more than four years to operate in district, maintained registered agent in district and conducted business in district on regular and ongoing basis 21 out of 52 weeks

each year. D.C. Code 1981, § 13-334. *Ross v. Product Dev. Corp.*, 736 F. Supp. 285, 1989 U.S. Dist. LEXIS 11858 (1989).

Even if they constituted "doing business," Michigan corporation's advertising of its suburban retail stores through District of Columbia media and maintenance of registered agent in District for receipt of process were neither substantial nor continuous so as to permit exercise of personal jurisdiction over corporation under statute governing service of process on foreign corporations. D.C. Code 1981, § 13-334(a); U.S. Const. Amends. 5, 14. *Bayles v. K-Mart Corp.*, 636 F. Supp. 852, 1986 U.S. Dist. LEXIS 24112 (1986).

A corporation which is "doing business" in District of Columbia is amenable to service under District of Columbia statute covering service on foreign corporations regardless of any connection between claim for relief and District of Columbia. D.C. Code § 13-334(a). *Ramamurti v. Rolls-Royce, Ltd.*, 454 F. Supp. 407, 1978 U.S. Dist. LEXIS 16371 (1978), affirmed without opinion by 612 F.2d 587, 198 U.S. App. D.C. 92 (1980), affirmed without opinion by 612 F.2d 587, 198 U.S. App. D.C. 92 (1980).

Term "doing business," within District of Columbia statute governing service on foreign corporations, is defined as any continuing corporate presence in forum state directed at advancing corporation's objectives. D.C. Code § 13-334(a). *Ramamurti v. Rolls-Royce, Ltd.*, 454 F. Supp. 407, 1978 U.S. Dist. LEXIS 16371 (1978), affirmed without opinion by 612 F.2d 587, 198 U.S. App. D.C. 92 (1980), affirmed without opinion by 612 F.2d 587, 198 U.S. App. D.C. 92 (1980).

Activities of foreign defendant's American subsidiary in District of Columbia in providing market information and service support for defendant's products used in United States constituted "doing business" in District of Columbia within statute governing service on foreign corporations and, hence, were such as to subject defendant to service via its subsidiary, notwithstanding claim that activities were those of a liaison office established solely for purpose of contacts with federal agencies, where activities involved substantial commercial relations with federal government acting in a proprietary rather than a governmental capacity and were regular, systematic, continuous and directed at advancing defendant's corporate objectives. D.C. Code § 13-334(a); Fed. Rules Civ. Proc. rule 4(d)(7), 18 U.S.C. *Ramamurti v. Rolls-Royce, Ltd.*, 454 F. Supp. 407, 1978 U.S. Dist. LEXIS 16371 (1978), affirmed without opinion by 612 F.2d 587, 198 U.S. App. D.C. 92 (1980), affirmed without opinion by 612 F.2d 587, 198 U.S. App. D.C. 92 (1980).

Although "doing business" standard of District of Columbia statute for service upon foreign corporations is broad, it must be construed far more narrowly in cases where claim for relief bears no relation to contacts with District that form jurisdictional base. D.C. Code § 13-334(a). *Ramamurti v. Rolls-Royce, Ltd.*, 454 F. Supp. 407, 1978 U.S. Dist. LEXIS 16371 (1978), affirmed without opinion by 612 F.2d 587, 198 U.S. App. D.C. 92 (1980), affirmed without opinion by 612 F.2d 587, 198 U.S. App. D.C. 92 (1980).

Foreign corporation which maintained an office within the District of Columbia for purpose of transacting substantial amount of business with the federal government and which had one full-time employee who serviced company's current contracts with the government as well as solicited new ones from that office was doing business in the District, and was amenable to service of process there. D.C. Code 1961, § 13-334(a). *Raymond v. Anthony Co.*, 233 F. Supp. 305, 1964 U.S. Dist. LEXIS 8345 (D.D.C. 1964).

The proper inquiry in determining if a court can exercise general personal jurisdiction over a foreign defendant is whether there is any continuing corporate presence in the forum state directed at advancing the corporation's objectives; if this test is met, the trial court may exercise jurisdiction, provided that such an exercise comports with due process. *Gonzalez v. Internacional de Elevadores, S.A.*, 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

While there are no hard and fast rules as to what constitutes "doing business" for purposes of obtaining service of process over foreign corporation, courts in District of Columbia have defined it as any continuing corporate presence in forum state directed at advancing corporation's objectives. D.C. Code § 13-334(a). *AMAF International Corp. v. Ralston Purina Co.*, 428 A.2d 849, 1981 D.C. App. LEXIS 242 (1981).

Under statute authorizing service of process on resident agents of corporations doing business in District of Columbia, District of Columbia had jurisdiction over suit based on contract with foreign corporation, which had qualified to do business in District and had been doing business there for 25 years, which maintained resident agent in District, conceded it did business in District, and which advertised its products in District, even though type of business corporation transacted in District was unrelated to subject matter of contract involved in lawsuit and corporation did not initiate that contract. D.C. Code § 13-334(a). *AMAF International Corp. v. Ralston Purina Co.*, 428 A.2d 849, 1981 D.C. App. LEXIS 242 (1981).

Foreign corporation was "doing business" within District of Columbia for purposes of its amenability to service of process there where corporation had business office in District, had sold stock there, and had conducted some of its

negotiations for appointment to its boards of directors and gave patent licensing agreement in District. D.C. Code § 13-334(a); D.C. Code SCR, Civil Rule 12(b)(4). *Price v. Griffin*, 359 A.2d 582, 1976 D.C. App. LEXIS 305 (1976).

While there is no bright line test to determine what constitutes "doing business," it has been defined as any continuing corporate presence in the forum state directed at advancing the corporation's objectives; similarly, "doing business" has been defined as continuous, systematic activity. *Etchebarne-Bourdin v. Bourdin*, 124 WLR 2261 (Super. Ct. 1996).

Due process.

Employees' factual allegations to support claims that employer, as president and principal owner of Maryland cleaning and janitorial services corporation, violated FLSA wage standards for seven employees, who provided cleaning services primarily in District of Columbia, established that employer through his corporation had continuous and systematic business activity in District of Columbia sufficient to comport with due process requirements for exercising general jurisdiction over employer, under District of Columbia law, not only for claims by District of Columbia employees but also for remaining claims by five employees primarily performing cleaning services in Virginia, since employer was more than mere employee of corporation, but rather, was sole owner and corporate officer who controlled management and policies of corporation as to employees' wages. *Azamar v. Stern*, 662 F.Supp.2d 166, 2009 U.S. Dist. LEXIS 95700 (2009).

The reach of general jurisdiction under the District of Columbia statute that governs service on foreign corporations is coextensive with the reach of constitutional due process. *FC Inv. Group LC v. IFX Mkts., Ltd.*, 479 F.Supp.2d 30, 2007 U.S. Dist. LEXIS 7919 (2007), affirmed by 529 F.3d 1087, 381 U.S. App. D.C. 383, 2008 U.S. App. LEXIS 13312 (2008).

Maintenance of website from which District of Columbia residents could download copyrighted music could constitute continuous and systematic contacts with District, in fulfillment of requirements of both constitutional due process and "doing business" provision of District's long-arm statute, for purpose of determining whether federal court had personal jurisdiction over nonresident website operator in infringement action brought by record companies; operator had purposefully directed its actions at District and could reasonably anticipate being hauled into court there as consequence. *Arista Records, Inc. v. Sakfield Holding Co.*, 314 F.Supp.2d 27, 2004 U.S. Dist. LEXIS 7023 (2004).

Reach of doing business jurisdiction under District of Columbia statute is coextensive with reach of constitutional due process. *Diamond*

Chem. Co. v. Atofina Chems., Inc., 268 F.Supp.2d 1, 2003 U.S. Dist. LEXIS 10549 (2003).

Foreign defendant corporation's business contacts with District of Columbia satisfied "minimum contacts" requirement of due process clause for exercise of jurisdiction; corporation's business contacts were regular, systematic, and continuous, and were purposefully established by defendant to advance corporate interest. U.S. Const. Amend. 14. *Ross v. Product Dev. Corp.*, 736 F. Supp. 285, 1989 U.S. Dist. LEXIS 11858 (1989).

In order to exercise general personal jurisdiction over a foreign corporation, the defendant corporation must purposely avail itself of the privilege of conducting activities within the forum state, and its continuing contacts with the District of Columbia must provide it with clear notice that it is subject to suit here. *Gonzalez v. Internacional de Elevadores, S.A.*, 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

In general.

Jurisdiction under the District of Columbia statute that governs service on foreign corporations requires that such systematic contacts demonstrate a continuing corporate presence in the forum directed at advancing the corporation's objectives. *FC Inv. Group LC v. IFX Mkts., Ltd.*, 479 F.Supp.2d 30, 2007 U.S. Dist. LEXIS 7919 (2007), affirmed by 529 F.3d 1087, 381 U.S. App. D.C. 383, 2008 U.S. App. LEXIS 13312 (2008).

Federal district court did not have general personal jurisdiction, under District of Columbia long-arm statute, over mining joint venture based in Peru, in suit claiming interference with catering operations involving Peruvian mine workers, when contacts consisted of trips to District by employees, to discuss details of funding with bank located in District. *AGS Int'l Servs. S.A. v. Newmont USA Ltd.*, 346 F.Supp.2d 64, 2004 U.S. Dist. LEXIS 23061 (2004).

Federal district court sitting in District of Columbia did not have general personal jurisdiction, under District's long-arm statute, over mining corporation headquartered in Colorado, in suit claiming interference with catering operations involving Peruvian mine workers; only contact with District was maintenance of one-person, two-room office, engaged in federal government liaison rather than sales activities. *AGS Int'l Servs. S.A. v. Newmont USA Ltd.*, 346 F.Supp.2d 64, 2004 U.S. Dist. LEXIS 23061 (2004).

District court can have personal jurisdiction over corporation, under District of Columbia law, if corporation is present in district by virtue of doing business in district, corporation is domiciled in, organized under laws of, or maintains principal place of business in dis-

trict, or corporation transacts business in or causes tortious injury in district. D.C. Code 1981, §§ 13-334(a), 13-422, 13-423. *Richard v. Bell Atl. Corp.*, 946 F. Supp. 54, 1996 U.S. Dist. LEXIS 17637 (1996).

For court to properly exercise jurisdiction over nonresident defendant, service of process over that defendant must be authorized by statute and must be within limits set by due process clause of Federal Constitution. U.S.C. Const.Amend. 14. *Ross v. Product Dev. Corp.*, 736 F. Supp. 285, 1989 U.S. Dist. LEXIS 11858 (1989).

Service of process was improper, where United States marshal mailed complaint directly to defendant in Virginia, rather than to agent in District of Columbia, which did not comply with either Federal Rules of Civil Procedure or with District of Columbia code. *Age Discrimination in Employment Act of 1967*, § 7(d), as amended, 29 U.S.C. § 626(d); Fed.R.Civ.Proc. Rule 4(c)(2)(C)(i, ii), (d)(3), (f), 28 U.S.C.A.; D.C. Code 1981, § 13-334. *Dixon v. Stephenson, Inc.*, 614 F. Supp. 60, 1985 U.S. Dist. LEXIS 22638 (1985).

Mauritian company was not subject to personal jurisdiction in District of Columbia in action seeking damages arising out of relocation of Chagos natives to Mauritius, even though company was affiliated with international accounting firm, company was represented in District by American company, and company was party to contract to recruit civilian employees for United States naval base in Chagos islands; claims did not arise out of company's actions in District, company's affiliation was with Swiss branch of accounting firm, agreement with American representative focused on consulting services for procurement of World Bank projects in Africa, recruitment contract was performed exclusively in Mauritius and was regulated by Mauritian law, and company did no advertising in United States, had no United States contacts, and supplied no services in United States. *Bancoult v. McNamara*, 214 F.R.D. 5, 2003 U.S. Dist. LEXIS 4370 (2003).

Unlike the Long Arm Statute, which permits the exercise of jurisdiction only as to claims arising out of a defendant's contact with the District, this section confers jurisdiction over a defendant for all purposes. *Etchebarne-Bourdin v. Bourdin*, 124 WLR 2261 (Super. Ct. 1996).

The District of Columbia did not have an adequate basis for asserting personal jurisdiction over defendants where plaintiff was a Virginia resident seeking medical treatment in connection with her pregnancy from Virginia doctors at their offices in Virginia and asserting that defendants' negligent treatment, all of which occurred in Virginia, resulted in her giving birth to a stillborn child in a Virginia

hospital. *Etchebarne-Bourdin v. Bourdin*, 124 WLR 2261 (Super. Ct. 1996).

Jurisdiction.

Lender's parent corporation had no meaningful relationship with the District of Columbia, as required for exercise of general jurisdiction over the corporation, under the District of Columbia's long-arm statute, in borrower's putative class action asserting claims arising out of lender's sub-prime lending practices, where it was headquartered in Virginia and organized under Virginia law, all its substantive decisions, including financial transactions, were made in Virginia, substantially all of its activities were performed in Virginia, and it never maintained a place of business or office, owned any property, or maintained a registered agent in the District of Columbia. *Khatib v. Alliance Bankshares Corp.*, 846 F.Supp.2d 18, 2012 U.S. Dist. LEXIS 27020 (2012).

District of Columbia could not exercise general jurisdiction over Bahamian bank and its Swiss parent, even if the banks had correspondent accounts in New York and maintained an agent for service of process; existence of bank accounts in New York did not establish the banks' presence in the District of Columbia, and agent, who was also in New York, by statute, was designated to receive service from either the Secretary of the Treasury or the Attorney General of the United States. *Day v. Corn.r Bank (Overseas) Ltd.*, 789 F.Supp.2d 150, 2011 U.S. Dist. LEXIS 83749 (2011).

District of Columbia could not exercise general jurisdiction over Bahamian law firm, even if the law firm had clients based in the District of Columbia, where law firm had never been authorized to do business in the District of Columbia, none of the firm's attorneys were admitted to the District of Columbia bar, the law firm did not recruit employees or solicit customers in the District of Columbia, and the only work done by the law firm for clients based in the District of Columbia was related to legal issues in the Bahamas. *Day v. Corn.r Bank (Overseas) Ltd.*, 789 F.Supp.2d 150, 2011 U.S. Dist. LEXIS 83749 (2011).

District court for the District of Columbia (D.C.) could not exercise general personal jurisdiction over non-resident United States producers of ferrosilicon and their parent companies in Brazilian ferrosilicon producers' suit alleging that the United States producers and their parent companies defrauded the International Trade Commission (ITC) and caused the Department of Commerce to impose antidumping duties that harmed the Brazilian producers; United States producers and their parent companies were not incorporated in D.C., they did not have agents in D.C., they were not licensed in D.C., and D.C. was not their principal place of business. *Companhia Brasileira Carbureto*

de Calcio-CBBC v. Applied Industrial Materials Corp., 698 F.Supp.2d 109, 2010 U.S. Dist. LEXIS 29157 (2010).

Financial services companies and officers sued by competitor seeking declaration that it owned all rights in financial management software lacked sufficient continuous and systematic contacts with forum for district court to assert general personal jurisdiction, pursuant to District of Columbia law; officer made only three trips to forum on behalf of company, none of which resulted in any business transactions. *Urban Inst. v. FINCON Servs.*, 681 F.Supp.2d 41, 2010 U.S. Dist. LEXIS 7971 (2010).

Jurisdictional reach of federal district court in District of Columbia was determined by District of Columbia's long-arm statute, subject to further demonstration that court's exercise of jurisdiction would be consistent with constitutional due process requirements. *Crichlow v. Warner Music Group Corp.*, 565 F.Supp.2d 1, 2008 U.S. Dist. LEXIS 51942 (2008).

Practice and procedure, generally.

Real estate broker demonstrated that it could, through discovery, supplement its allegations that District of Columbia courts had jurisdiction over its action alleging that securities broker failed to honor contract to provide front-page link to real estate broker's Internet website, and real estate broker thus would have been entitled to discovery, absent insufficient service of process, where securities broker's customers entered into binding contracts over Internet, securities broker offered customers alternative of conducting transactions by mail or telephone, and securities broker permitted transactions 24 hours a day. *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 2002 U.S. App. LEXIS 11674 (C.A.D.C. 2002).

Additional discovery would be allowed, before determination of motion to dismiss, to determine whether federal district court sitting in District of Columbia had general personal jurisdiction over bank located in Jordan, based upon bank doing business in District; while level of bank's involvement in District, as reflected in initial complaint, was insufficient to support conclusion that bank was doing business there, proponent of jurisdiction had not relied upon general conclusory allegations but had cited specific instances of bank involvement, and as bank had initially denied any involvement, it was not implausible that further discovery would show further connections with District. D.C. Code 1981, § 13-334(a). *El-Fadl v. Central Bank of Jordan*, 75 F.3d 668, 1996 U.S. App. LEXIS 1552 (C.A.D.C. 1996).

Physician's action against foreign corporation was properly dismissed for lack of personal jurisdiction, even though physician insisted that requisite connection of corporation's division and subsidiaries in forum would have been

revealed with sufficient clarity had corporation adequately answered interrogatories, where physician failed for nearly three years before moving to compel further discovery responses. D.C. Code 1981, §§ 13-334(a), 13-423(a)(4). *Reuber v. United States*, 787 F.2d 599, 1986 U.S. App. LEXIS 24021 (C.A.D.C. 1986).

Plaintiff failed to personally serve Mexican corporation in the District, but rather served the corporation in Mexico, and thus, the trial court lacked general personal jurisdiction over the corporation under statute that allowed jurisdiction over foreign companies that did business in the District. *Gonzalez v. Internacional de Elevadores, S.A.*, 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

Service of process.

District Court for the District of Columbia lacked personal jurisdiction over non-resident for-profit corporation that assisted medical students in obtaining medical residency positions, pursuant to provision of District of Columbia's long-arm statute allowing general personal jurisdiction over foreign corporations, in action brought by non-profit corporation that conducted annual program to match students with residency program, alleging conspiracy to defraud, civil conspiracy, tortious interference and trade secret misappropriation; the non-profit failed to serve the for-profit in the District of Columbia. *Nat'l Resident Matching Program v. Elec. Residency LLC*, 720 F.Supp.2d 92, 2010 U.S. Dist. LEXIS 66582 (2010).

It was appropriate to remove employee's actions against her former employer, alleging employer wrongfully produced her employment records in response to subpoena served on it in prior litigation involving employee and another former employer, notwithstanding employee's claim that action was removed before former employer was properly served in District of Columbia Superior Court, since formal service was not required before removing a case. *Middlebrooks v. Godwin Corp.*, 279 F.R.D. 8, 2011 U.S. Dist. LEXIS 129666 (2011).

Subsidiaries.

District of Columbia law permits courts to exercise general jurisdiction over a foreign corporation as to claims not arising from the corporation's conduct in the District, if the corporation is doing business in the District. *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 2002 U.S. App. LEXIS 11674 (C.A.D.C. 2002).

Under District of Columbia law, Delaware corporation and limited liability company (LLC) were not doing business in District at time complaint was filed against them, and thus their Swiss parent company was not subject to personal jurisdiction in District under alter ego theory based on their contacts with

District, where corporation and LLC had been dissolved before action was commenced and did not maintain addresses in District, and there was no evidence that their activities in District advanced parent's business objectives. *Roz Trading Ltd. v. Zeromax Group, Inc.*, 517 F.Supp.2d 377, 2007 U.S. Dist. LEXIS 72056 (2007).

Under District of Columbia law, defendant corporation's contacts with forum may not be attributed to affiliated corporations, except where affiliated parties are alter egos of corporation over which court has personal jurisdiction, in which case corporation's contacts may be attributed to affiliated party for jurisdictional purposes. *Roz Trading Ltd. v. Zeromax Group, Inc.*, 517 F.Supp.2d 377, 2007 U.S. Dist. LEXIS 72056 (2007).

Ordinarily, defendant corporation's contacts with forum may not be attributed to affiliated corporations under general District of Columbia "doing business" statute; exception exists, however, where affiliated parties are alter egos of corporation over which court has personal jurisdiction, and in that case corporation's contacts may be attributed to affiliated party for jurisdictional purposes. *Diamond Chem. Co. v. Atofina Chems., Inc.*, 268 F.Supp.2d 1, 2003 U.S. Dist. LEXIS 10549 (2003).

In antitrust conspiracy case, district court lacked general personal jurisdiction over French corporation based on asserted contacts of its "alter ego" subsidiaries with District of Columbia, absent demonstration that any subsidiary with continuous and systematic contacts with District of Columbia was not separate entity but in fact French corporation acting under different guise; shared executives and joint promotion after merger were not sufficient. *Diamond Chem. Co. v. Atofina Chems., Inc.*, 268 F.Supp.2d 1, 2003 U.S. Dist. LEXIS 10549 (2003).

Formalistic approach is used to determine whether parent and subsidiary are separate entities for purposes of determining whether parent has continuing corporate presence in forum sufficient for district court to have general jurisdiction over parent under District of Columbia law establishing jurisdiction over foreign corporation doing business in district. D.C. Code 1981, § 13-334(a). *Richard v. Bell Atl. Corp.*, 946 F. Supp. 54, 1996 U.S. Dist. LEXIS 17637 (1996).

Employees sufficiently alleged that subsidiaries operating in District of Columbia were agents of foreign parent company to state claims within district court's jurisdiction, under District of Columbia law, on grounds that foreign corporation had continuing corporate presence in forum. D.C. Code 1981, § 13-334(a). *Richard v. Bell Atl. Corp.*, 946 F. Supp. 54, 1996 U.S. Dist. LEXIS 17637 (1996).

Subsidiaries, doing business in District.

In personal injury action in District of Co-

lumbia federal district court against automobile manufacturer for damages resulting from automobile accident in South Africa, manufacturer, a Japanese corporation whose principal place of business was in Japan, was not subject to personal jurisdiction by virtue of its subsidiaries' activities under District's provision for service of foreign corporations; subsidiaries contacts with District were irrelevant because subsidiaries were not alter egos of manufacture as would warrant imputing their contacts to manufacturer. *Miller v. Toyota Motor Corp.*, 620 F.Supp.2d 109, 2009 U.S. Dist. LEXIS 46605 (2009).

— Distinguished from transacting business, doing business in district.

Anthrax vaccine manufacturer's limited contacts with the District of Columbia fell short of satisfying the "doing business" requirement of District's long-arm statute, and thus, federal court located in District of Columbia did not have general jurisdiction over Michigan manufacturer in products liability action brought against manufacturer by consumer, who alleged that he suffered serious ailments from the anthrax inoculations he received while in the military; manufacturer's contacts were only sufficient for transacting business, and thus, it was only subject to specific jurisdiction arising out of its contacts in the forum. *Savage v. Bioport, Inc.*, 460 F.Supp.2d 55, 2006 U.S. Dist. LEXIS 78144 (2006).

Difference between jurisdiction under Clayton Act section providing for proper forum in which to bring antitrust action against corporation and District of Columbia (D.C.) long-arm statute is that while both look at contacts with district, under Clayton Act provision transactions do not have to be related to cause of action or subject matter of suit, while under D.C. long-arm statute there must be connection between jurisdictional contacts and cause of action. *Diamond Chem. Co. v. Atofina Chems., Inc.*, 268 F.Supp.2d 1, 2003 U.S. Dist. LEXIS 10549 (2003).

Unlike District of Columbia's long-arm statute, broader "doing business" statute confers jurisdiction over defendant corporation for all purposes, not merely for those claims arising out of defendant's contacts with district. D.C. Code 1981, §§ 13-334, 13-423. *Ross v. Product Dev. Corp.*, 736 F. Supp. 285, 1989 U.S. Dist. LEXIS 11858 (1989).

The proper inquiry in determining if a court can exercise general personal jurisdiction over a foreign defendant is whether there is any continuing corporate presence in the forum state directed at advancing the corporation's objectives; if this test is met, the trial court may exercise jurisdiction, provided that such an exercise comports with due process. *Gonzalez v.*

Internacional de Elevadores, S.A., 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

Under statute authorizing service of process on agent of foreign corporation doing business in District of Columbia, foreign corporation which carries on consistent pattern of regular business activity within jurisdiction is subject to general jurisdiction of District of Columbia courts, upon proper service, and not merely for suits arising out of its activity in District of Columbia, and this is in direct contrast to "transacting any business" provision of long-arm statute, under which jurisdiction is limited to claims arising from particular transaction of business which forms basis of jurisdiction. D.C. Code §§ 13-334(a), 13-423, 13-423(a)(1). *AMAF International Corp. v. Ralston Purina Co.*, 428 A.2d 849, 1981 D.C. App. LEXIS 242 (1981).

Summary judgment.

Defendant's submission of affidavit, in support of motion to dismiss for lack of jurisdiction, setting forth facts tending to show that defendant did not do business in district, converted motion into one for summary judgment. D.C. Code General Sessions Court Rules, § 1 rules 12(b)(2), (c), 56; D.C. Code § 13-334(b). *Harmatz v. Zenith Radio Corp.*, 265 A.2d 291, 1970 D.C. App. LEXIS 284 (App. 1970).

Summary judgment of dismissal for want of jurisdiction was proper where defendant submitted affidavit setting forth facts tending to show that it did not do business in district and plaintiff did not present any evidence on question of whether defendant did business but

relied solely on conclusory allegation in complaint. D.C. Code § 13-334(a). *Harmatz v. Zenith Radio Corp.*, 265 A.2d 291, 1970 D.C. App. LEXIS 284 (App. 1970).

Transacting business in District.

New Jersey insurer, which administered its hospital insurance contracts in District of Columbia, through officers, personnel and facilities of sister insurer for which it provided similar expert services in New Jersey, engaged in "transaction of business" in the District of Columbia, so that it could be required, on being properly summoned, to answer resident of District of Columbia in United States District Court for alleged dereliction having its immediate impact in District of Columbia. D.C. Code 1961, § 13-334(b). *Washington v. Hospital Service Plan*, 345 F.2d 105, 1965 U.S. App. LEXIS 6131 (C.A.D.C. 1965).

Netherlands law firm's participation in United States and international legal organizations, visits to clients in the United States, and attendance at legal education seminars in the United States would not establish specific personal jurisdiction over firm in corporation's legal malpractice action in District of Columbia federal district court as would permit jurisdictional discovery regarding firm's contacts; discovery would merely show firm's contacts with the United States generally, and corporation's claim did not rise out of any of firm's contacts for which discovery was sought. *Exponential Biotherapies, Inc. v. Houthoff Buruma N.V.*, 638 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 65763 (2009).

§ 13-335. Service by publication on domestic or foreign corporations.

In an action specified by section 13-336, when process can not be served upon a domestic or foreign corporation, the corporation may be proceeded against as a nonresident defendant, by notice by publication.

(Dec. 23, 1963, 77 Stat. 514, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 13-335. 1973 Ed., § 13-335.

§ 13-336. Service by publication on nonresidents, absent defendants, and unknown heirs or devisees.

(a) In actions specified by subsection (b) of this section, publication may be substituted for personal service of process upon a defendant who can not be found and who is shown by affidavit to be a nonresident, or to have been absent from the District for at least six months, or against the unknown heirs or devisees of deceased persons.

(b) This section applies only to:

(1) actions for partition;

- (2) actions for divorce or annulment;
- (3) actions for child custody under D.C. Official Code, Title 16, Chapter 45 [repealed];
- (4) actions by attachment;
- (5) actions for foreclosure of mortgages and deeds of trust;
- (6) actions for the establishment of title to real estate by possession;
- (7) actions for the enforcement of mechanics' liens, and other liens against real or personal property within the District; and
- (8) actions that have for their immediate object the enforcement or establishment of any lawful right, claim, or demand to or against any real or personal property within the jurisdiction of the court.

(Dec. 23, 1963, 77 Stat. 514, Pub. L. 88-241, § 1; Mar. 10, 1983, D.C. Law 4-200, § 3, 30 DCR 125.)

Section references. — This section is referred to in §§ 13-335 and 13-337.

Prior Codifications. — 1981 Ed., § 13-336. 1973 Ed., § 13-336.

Legislative history of Law 4-200. — Law 4-200, the "District of Columbia Adoption of the Uniform Child Custody Jurisdiction and Marital or Parent and Child Long-Arm Jurisdiction Amendments Act of 1982," was introduced in

Council and assigned Bill No. 4-237, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-284 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Construction and application.
Divorce or annulment proceedings.
In general.
Judicial notice.
Review and remand.
Support proceedings.

Construction and application.

Statutes purporting to authorize constructive service by publication must be strictly construed. *Spevacek v. Wright*, 512 A.2d 1024, 1986 D.C. App. LEXIS 393 (1986).

This section is in derogation of the common law and must be strictly construed. *Rapid Rentals, Inc. v. Myers*, 115 WLR 2453 (Super. Ct. 1987).

Insured's contract rights under policy of insurance do not constitute personal property for purposes of this section. *Rapid Rentals, Inc. v. Myers*, 115 WLR 2453 (Super. Ct. 1987).

Divorce or annulment proceedings.

Generally, before order authorizing constructive notice in divorce action is entered, it is incumbent upon plaintiff to detail for court particular efforts which have been made in effort to ascertain defendant's present address and to furnish court following information: time and place at which parties last resided together as spouses; last time parties were in

contact with each other; name and address of last employer of defendant either during time parties resided together or at later time if known to plaintiff; names and addresses of relatives known to be close to defendant; and any other information which could furnish fruitful basis for further inquiry by one truly bent on learning present whereabouts of defendant. D.C. Code SCR, Dom.Rel. Rule 4(j). *Bearstop v. Bearstop*, 377 A.2d 405, 1977 D.C. App. LEXIS 373 (1977).

Trial court order denying indigent wife's motion to effectuate constructive service upon her husband in divorce action was not erroneous where none of wife's documents revealed name of husband's employer, if any, when couple lived together, or if any effort had been made to learn either through husband's friends or relatives current address of husband. D.C. Code SCR, Dom.Rel. Rule 4(j). *Bearstop v. Bearstop*, 377 A.2d 405, 1977 D.C. App. LEXIS 373 (1977).

Trial court, in divorce action, did not abuse discretion in denying indigent wife's motion to effectuate constructive service upon missing husband without regard to publication requirements of applicable rule where, although complaint gave district address for husband, no attempt was made to serve process upon him there, and where no information pertaining to husband's employment or efforts, if any, to locate him through his last or previous employ-

ers was furnished. D.C. Code SCR, Dom.Rel. Rule 4(j). *Bearstop v. Bearstop*, 377 A.2d 405, 1977 D.C. App. LEXIS 373 (1977).

Trial court's denial of indigent wife's motion to effectuate constructive service upon her missing husband in divorce action without regard to publication requirements of applicable rule was not error where there was no assertion made of any effort to trace missing husband through former employers or postal authorities. D.C. Code SCR, Dom.Rel. Rule 4(j). *Bearstop v. Bearstop*, 377 A.2d 405, 1977 D.C. App. LEXIS 373 (1977).

There may be circumstances where marriage or courtship was of such short duration that parties seeking divorce may not be presumed to have much information about missing spouse, and in such cases, court, by interrogating plaintiffs, may conclude that kind of efforts which would ordinarily be deemed essential to diligent search would not prove fruitful and in such cases permit plaintiffs to effectuate constructive service. D.C. Code SCR, Dom.Rel. Rule 4(j). *Bearstop v. Bearstop*, 377 A.2d 405, 1977 D.C. App. LEXIS 373 (1977).

Where indigent wife made satisfactory showing of diligence in her efforts to ascertain whereabouts of husband, trial court erred in denying wife's motion for reconsideration of denial of her motion for order of service by publication in one newspaper only on ground that publication in two newspapers was indispensable requirement. D.C. Code SCR, Dom.Rel. Rule 4(j). *Bearstop v. Bearstop*, 377 A.2d 405, 1977 D.C. App. LEXIS 373 (1977).

Importance of making a defendant aware of an action brought against him is particularly true in the domestic relations area. *Gomez v. Gomez*, 341 A.2d 423, 1975 D.C. App. LEXIS 408 (1975).

Judicial finding in foreign divorce decree held functional equivalent of required affidavit of nonresidence. *Brown v. Brown*, 110 WLR 2177 (Super. Ct. 1982).

In a divorce proceeding substituted service is sufficient to confer jurisdiction as to claims in rem, including the divorce itself, and the resolution of certain issues affecting title to property in the District, but insufficient as to claims sounding in personam, such as alimony, costs, and counsel fees. *Brown v. Brown*, 110 WLR 2177 (Super. Ct. 1982).

In general.

Sections of District of Columbia code authorizing personal service of process on nonresidents and substitution of publication for personal service on nonresident include actions equitable in nature, although court's power may be limited to property within jurisdiction. D.C. Code 1961, §§ 13-336(a, b), 13-337(a). *Poorvu v. Vacca*, 241 F. Supp. 948, 1965 U.S. Dist. LEXIS 6368 (D.D.C.1965).

Showing of diligent but futile efforts to ascertain whereabouts of defendant is prerequisite to order substituting publication for personal service. D.C. Code §§ 11-701, 13-338, 13-340(b). *Bearstop v. Bearstop*, 377 A.2d 405, 1977 D.C. App. LEXIS 373 (1977).

Trial court's selecting for publication of process in divorce proceedings a newspaper other than newspaper preferred by wife's counsel did not work a denial of access to the courts, where wife, who asserted that publication in newspaper selected by court was more costly than publication in newspaper preferred by counsel, had been permitted to proceed in forma pauperis. D.C. Code §§ 13-336(a, b), 13-338, 13-340(a); D.C. Code SCR, Dom.Rel.Rules 4(j), 12-I(b). *Gomez v. Gomez*, 341 A.2d 423, 1975 D.C. App. LEXIS 408 (1975).

Judicial notice.

Relative publication costs were not items of which court could take judicial notice for purpose of determining whether trial court abused its discretion in ordering service by publication in a newspaper other than newspaper chosen by plaintiff's counsel; even if they were, judicial notice could not be used as device to correct on appeal the almost complete failure to present adequate evidence of publication costs to the trial court. D.C. Code §§ 13-336(a, b), 13-338, 13-340(a); D.C. Code SCR, Dom.Rel.Rules 4(j), 12-I(b). *Gomez v. Gomez*, 341 A.2d 423, 1975 D.C. App. LEXIS 408 (1975).

Review and remand.

Court of Appeals had jurisdiction to review trial court orders denying motions by indigent divorce complainants to effectuate constructive service upon their husbands even though such orders did not terminate pending litigation in any of the cases, since orders in question were separable from merits of divorce actions themselves and, if unreviewed, could cause irreparable harm to parties. D.C. Code §§ 11-701, 13-338, 13-340(b). *Bearstop v. Bearstop*, 377 A.2d 405, 1977 D.C. App. LEXIS 373 (1977).

Record on appeal from trial court's ruling in selecting for publication of process in divorce proceeding a newspaper other than newspaper preferred by plaintiff wife was inadequate and remand was required where no facts as to publication costs were presented to the trial court and motion for publication contained merely naked assertions that plaintiff could not afford to publish in two newspapers and that newspaper preferred by her counsel was the least expensive newspaper. D.C. Code §§ 13-336(a, b), 13-338, 13-340(a); D.C. Code SCR, Dom.Rel.Rules 4(j), 12-I(b). *Gomez v. Gomez*, 341 A.2d 423, 1975 D.C. App. LEXIS 408 (1975).

Support proceedings.

Statute authorizing service by publication in eight enumerated types of cases did not provide

for service by publication in Uniform Reciprocal Enforcement of Support Act cases or in any other kind of support proceeding independent of divorce action or custody action. D.C. Code

1981, §§ 13-336, 30-301 to 30-324. *Spevacek v. Wright*, 512 A.2d 1024, 1986 D.C. App. LEXIS 393 (1986).

§ 13-337. Personal service outside District in lieu of publication.

(a) In actions specified by section 13-336, personal service of process may be made on a nonresident defendant out of the District, and the service has the same effect, and no other, as an order of publication duly executed.

(b) The service may be made by any person not a party to or otherwise interested in the subject-matter in controversy. The return shall be made under oath in the District of Columbia, unless the person making the service is a sheriff, deputy sheriff, marshal, or deputy marshal, authorized to serve process where service is made. The return must show the time and place of service and that the defendant so served is a nonresident of the District of Columbia.

(c) The cost and expense of such service of process out of the District shall be borne by the party at whose instance it is made and may not be taxed as part of the costs in the case; but where the service of process is made by an authorized officer of the law specified by this section, the actual and usual cost of the service of process shall be taxed as a part of the costs in the case.

(Dec. 23, 1963, 77 Stat. 514, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 13-337. 1973 Ed., § 13-337.

CASE NOTES

In general.

Sections of District of Columbia code authorizing personal service of process on nonresidents and substitution of publication for personal service on nonresident include actions equitable in nature, although court's power may be limited to property within jurisdiction. D.C. Code 1961, §§ 13-336(a, b), 13-337(a). *Poorvu v. Vacca*, 241 F. Supp. 948, 1965 U.S. Dist. LEXIS 6368 (D.D.C.1965).

Nonresident defendant moving to quash return of personal service of process had burden of proving that he in fact owned no property in District over which court had jurisdiction, where he contended that he had assigned his

admitted interest in property prior to institution of suit but did not deny that lease agreements recorded subsequent to assignment transferred interest in property back to defendant. D.C. Code 1961, §§ 13-336(a, b), 13-337(a). *Poorvu v. Vacca*, 241 F. Supp. 948, 1965 U.S. Dist. LEXIS 6368 (D.D.C.1965).

In a divorce proceeding substituted service is sufficient to confer jurisdiction as to claims in rem, including the divorce itself, and the resolution of certain issues affecting title to property in the District, but insufficient as to claims sounding in personam, such as alimony, costs, and counsel fees. *Brown v. Brown*, 110 WLR 2177 (Super. Ct. 1982).

§ 13-338. Prerequisites for order of publication.

An order for the substitution of publication for personal service may not be made until:

(1) a summons for the defendant has been issued and returned "Not to be found," and

(2) the nonresidence of the defendant or his absence for at least six months is proved by affidavit to the satisfaction of the court.

(Dec. 23, 1963, 77 Stat. 514, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 13-338. 1973 Ed., § 13-338.

CASE NOTES

Divorce proceedings.

Husband's motion for substituted service of process in divorce action was deficient on its face, and thus, resulting default divorce judgment was void; husband failed to supply any information about wife's employment as babysitter even though it was doubtful that he knew nothing about people for whom she worked, he failed to provide names and addresses of people he allegedly contacted in order to discover wife's current address, and, despite fact that parties had been married for six years, he failed to provide any other information about wife which court might have found useful in ascertaining her whereabouts. D.C. Code 1981, § 13-338. *Cruz v. Sarmiento*, 737 A.2d 1021, 1999 D.C. App. LEXIS 200 (1999).

In addition to the information required by statute, a plaintiff in a divorce proceeding must furnish certain information to the court before an order authorizing substituted service may be entered: (1) the time and place at which the parties last resided together as spouses; (2) the last time the parties were in contact with each other; (3) the name and address of the last

employer of the defendant either during the time the parties resided together or at a later time if known to the plaintiff; (4) the names and addresses of those relatives known to be close to the defendant; and (5) any other information which could furnish a fruitful basis for further inquiry by one truly bent on learning the present whereabouts of the defendant. D.C. Code 1981, § 13-338. *Cruz v. Sarmiento*, 737 A.2d 1021, 1999 D.C. App. LEXIS 200 (1999).

Divorce decree would be set aside for extrinsic fraud where there was a strong inference that at the time husband filed an affidavit of nonresidence to obtain publication rather than personal service under this section and an affidavit of non-mailing pursuant to which the court granted the divorce without requiring that a copy of published notice be mailed to the last known place of residence of the wife pursuant to § 13-340 that the husband had actual knowledge of the wife's whereabouts or that he failed to inquire of all persons likely to know of her whereabouts or that her whereabouts were not completely unknown to him. *Cobb v. Cobb*, 116 WLR 1993 (Super. Ct. 1988).

§ 13-339. Form of order of publication.

An order of publication shall be in the following or an equivalent form:

United States District Court for the District of Columbia.

AB, plaintiff,

versus

In _____. No. _____

CD, defendant.

The object of this action is to (state it briefly).

On motion of the plaintiff, it is this _____ day of _____, A.D. _____, ordered that the defendant cause his appearance to be entered herein on or before the fortieth day, exclusive of Sundays and legal holidays, occurring after the day of the first publication of this order; otherwise the cause will be proceeded with as in cause of default.

Judge.

(Dec. 23, 1963, 77 Stat. 515, Pub. L. 88-241, § 1.)

Section references. — This section is referred to in § 13-340.

Prior Codifications. — 1981 Ed., § 13-339. 1973 Ed., § 13-339.

§ 13-340. Manner of publication; mailing of copy; default; appointment and compensation of guardian and attorney.

(a) An order of publication shall be published at least once a week for three successive weeks, or oftener, or for such further time as the court orders. In actions for divorce in which service by publication is authorized under this chapter, and satisfactory evidence is presented to the court that the plaintiff is unable to pay the cost of publishing an advertisement pursuant to D.C. Official Code sec. 13-340, without substantial hardship to himself or herself, or to his or her family, the court may direct that such publication may be made by posting the order of publication defined in D.C. Official Code sec. 13-339, for a period of twenty-one calendar days, in the Clerk's Office of the Family Division of the Superior Court of the District of Columbia.

(b) An order, judgment or decree may not be entered against an absent or nonresident defendant upon proof of notice by publication, unless the plaintiff, his agent, or attorney files in the action an affidavit showing that at least twenty days before applying for the order, judgment or decree he mailed, postpaid, a copy of the advertisement or the order of the publication posted pursuant to subsection (a) of this section, directed to the party therein ordered to appear, at his last known place of residence, or that after diligent effort he has been unable to ascertain the last place of residence of the party.

(c) On failure of the defendant to appear in obedience to the notice within the time stated therein, a judgment or decree by default may be entered.

(d) If the absent or nonresident defendant is an infant, the provisions of the rules of court concerning guardians ad litem and default judgments shall apply, and the court may assign counsel to represent the infant in the manner provided by subsection (a) of section 13-332.

(e) If the absent or nonresident defendant is non compos mentis, the provisions of the rules of court concerning guardians ad litem and default judgments shall apply, and the court shall assign an attorney to represent the defendant, whose compensation shall be paid by the plaintiff, or out of the estate of the defendant, at the discretion of the court.

(Dec. 23, 1963, 77 Stat. 515, Pub. L. 88-241, § 1; Apr. 7, 1977, D.C. Law 1-107, title II, § 201, 23 DCR 8737.)

Section references. — This section is referred to in § 16-3706.

Prior Codifications. — 1981 Ed., § 13-340. 1973 Ed., § 13-340.

Legislative history of Law 1-107. — Law 1-107, the "District of Columbia Marriage and Divorce Act," was introduced in Council and assigned Bill No. 1-89, which was referred to

the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first readings on July 27, 1976 and September 15, 1976, and second readings on November 22, 1976 and December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

CASE NOTES

Divorce proceedings.

Decree of divorce was void for lack of juris-

diction where insufficient efforts were made to locate the person who was served by publica-

tion, provide her with notice of the proceedings, and give her an opportunity to be heard. *Cobb v. Cobb*, 116 WLR 1993 (Super. Ct. 1988).

Divorce decree would be set aside for extrinsic fraud where there was a strong inference that at the time husband filed an affidavit of nonresidence to obtain publication rather than personal service under § 13-338 and an affidavit of non-mailing pursuant to which the court

granted the divorce without requiring that a copy of published notice be mailed to the last known place of residence of the wife pursuant to this section that the husband had actual knowledge of the wife's whereabouts or that he failed to inquire of all persons likely to know of her whereabouts or that her whereabouts were not completely unknown to him. *Cobb v. Cobb*, 116 WLR 1993 (Super. Ct. 1988).

§ 13-341. Service by publication on persons unknown to be living or dead and on unknown heirs and devisees.

(a) When a person would be a proper party to a judicial proceeding if living, and upon allegation under oath and proof satisfactory to the court that it is unknown whether he is living or dead, he may be proceeded against as if he were living, and with like effect, if a representative of or claimant under him does not intervene in the action before final determination thereof, after notice by publication as in the case of nonresident parties.

(b) When a person who would have been a proper party to a judicial proceeding is dead, and it is unknown whether he died testate or left heirs, or his heirs and devisees are unknown, the unknown persons may be described as the heirs or devisees of the person who, if living, would be the proper party. Notice shall be given by publication to them according to that description, and the same proceedings shall be had against them as are had against nonresident defendants, except that:

(1) the notice shall be published at least twice a month for such period, not less than three months without good cause shown, as the court orders, and the notice shall require the parties to appear on or before the day fixed in the notice to appear; and

(2) an order, judgment or decree may not be entered against the parties unless the court is satisfied that due diligence has been used to ascertain the unknown heirs.

(Dec. 23, 1963, 77 Stat. 515, Pub. L. 88-241, § 1.)

Cross references. — Service of process, limitations, see § 13-331.

Section references. — This section is referred to in § 16-3301.

Prior Codifications. — 1981 Ed., § 13-341. 1973 Ed., § 13-341.

CHAPTER 4. CIVIL JURISDICTION AND SERVICE OUTSIDE THE DISTRICT OF COLUMBIA.

Subchapter I. General Provisions

Sec.

13-401. Relation to other provisions of law.

13-402. Uniformity of interpretation.

Subchapter II. Bases of Personal Jurisdiction over Persons Outside the District of Columbia

13-421. Definition of person.

13-422. Personal jurisdiction based upon enduring relationship.

13-423. Personal jurisdiction based upon conduct.

Sec.

13-424. Service outside the District of Columbia.

13-425. Inconvenient forum.

Subchapter III. Service Outside the District of Columbia

13-431. Manner and proof of service.

13-432. Individuals eligible to make service.

13-433. Individuals to be served; special cases.

13-434. Assistance to tribunals and litigants outside the District of Columbia.

Subchapter I. General Provisions.

§ 13-401. Relation to other provisions of law.

Except in cases of irreconcilable conflict, this chapter shall be construed to augment, and not to repeal, any other law of the District of Columbia authorizing another basis of jurisdiction or permitting another procedure for service in civil proceedings in the District of Columbia courts.

(July 29, 1970, 84 Stat. 548, Pub. L. 91-358, title I, § 132(a).)

Prior Codifications. — 1981 Ed., § 13-401. 1973 Ed., § 13-401.

CASE NOTES

In general.

One congressional purpose in adopting long-arm statute for District of Columbia was to closely assimilate District of Columbia law on jurisdiction to that of neighboring states of Virginia and Maryland. D.C. Code §§ 13-401 et seq., 13-421. *Day v. Avery*, 548 F.2d 1018, 1976 U.S. App. LEXIS 6316 (C.A.D.C. 1976), writ of certiorari denied by 431 U.S. 908, 97 S. Ct. 1706, 52 L. Ed. 2d 394, 1977 U.S. LEXIS 1736 (1977).

Long-arm statute enacted as part of Court Reorganization Act of 1970 exists independently of Motor Vehicle Safety Responsibility Act as an alternative, independent method for acquiring in personam jurisdiction over a non-resident motorist. D.C. Code §§ 11-101 et seq., 13-401 et seq., 13-402, 13-423(a)(3), 13-431, 40-417 to 40-498c, 40-423, 40-423(a). *Liberty Mut. Ins. Co. v. Burgess*, 308 A.2d 775, 1973 D.C. App. LEXIS 334 (1973).

§ 13-402. Uniformity of interpretation.

When the statutory language so permits, this chapter shall be so interpreted and construed as to make it uniform with the laws of those jurisdictions which enact in comparable form the first two articles of the Uniform Interstate and International Procedure Act.

(July 29, 1970, 84 Stat. 548, Pub. L. 91-358, title I, § 132(a).)

Prior Codifications. — 1981 Ed., § 13-402. 1973 Ed., § 13-402.

*Subchapter II. Bases of Personal Jurisdiction over Persons
Outside the District of Columbia.*

§ 13-421. Definition of person.

As used in this subchapter, the term “person” includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, whether or not a citizen or domiciliary of the District of Columbia and whether or not organized under the laws of the District of Columbia.

(July 29, 1970, 84 Stat. 549, Pub. L. 91-358, title I, § 132(a).)

Prior Codifications. — 1981 Ed., § 13-421. 1973 Ed., § 13-421.

CASE NOTES

ANALYSIS

Cities.
Partnerships.
States.

Cities.

City of Newark, New Jersey was not a “person” subject to District of Columbia’s long-arm statute. *Black v. City of Newark*, 535 F.Supp.2d 163, 2008 U.S. Dist. LEXIS 17677 (2008).

Partnerships.

Under both Uniform Interstate and International Procedure Act and its District of Columbia counterpart, law governing service on partnerships remains unchanged by long-arm

statute, and in District of Columbia partnership entity is never to be served but rather service must be made on all partners. D.C. Code §§ 13-401 et seq., 13-421. *Day v. Avery*, 548 F.2d 1018, 1976 U.S. App. LEXIS 6316 (C.A.D.C. 1976), writ of certiorari denied by 431 U.S. 908, 97 S. Ct. 1706, 52 L. Ed. 2d 394, 1977 U.S. LEXIS 1736 (1977).

States.

State is not a “person” within meaning of District of Columbia’s long-arm statute, which provides for jurisdiction over nonresident “person” who transacts business there. D.C. Code 1981, § 13-423(a)(1). *United States v. Ferrara*, 54 F.3d 825, 1995 U.S. App. LEXIS 11789 (C.A.D.C. 1995).

§ 13-422. Personal jurisdiction based upon enduring relationship.

A District of Columbia court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, or maintaining his or its principal place of business in, the District of Columbia as to any claim for relief.

(July 29, 1970, 84 Stat. 549, Pub. L. 91-358, title I, § 132(a).)

Prior Codifications. — 1981 Ed., § 13-422. 1973 Ed., § 13-422.

CASE NOTES

ANALYSIS

Corporations.
Discovery.
Domiciliary of District.
Factors.
Fiduciary shield.
In general.
Non-residents.

Personal jurisdiction.
Presumptions and burden of proof.
Sufficiency of allegations.

Corporations.

Under District of Columbia law, federal district court had general personal jurisdiction over former members of church corporation, for purposes of corporation’s trademark infringe-

ment action; members held themselves out as controlling officers of an organization incorporated in D.C., court had general personal jurisdiction over organization, and church alleged that former members, rather than organization misrepresented and misappropriated church's name under guise of corporation. *Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell*, 578 F.Supp.2d 164, 2008 U.S. Dist. LEXIS 75441 (2008).

District court can have personal jurisdiction over corporation, under District of Columbia law, if corporation is present in district by virtue of doing business in district, corporation is domiciled in, organized under laws of, or maintains principal place of business in district, or corporation transacts business in or causes tortious injury in district. D.C. Code 1981, §§ 13-334(a), 13-422, 13-423. *Richard v. Bell Atl. Corp.*, 946 F. Supp. 54, 1996 U.S. Dist. LEXIS 17637 (1996).

That at time of suit nonresident defendant corporation owned a corporation doing business in the District of Columbia did not subject defendant to district court's exercise of personal jurisdiction. *Martin-Trigona v. Acton Corp.*, 600 F. Supp. 1193, 1984 U.S. Dist. LEXIS 21237 (1984), affirmed without opinion by 818 F.2d 95, 260 U.S. App. D.C. 229, 1987 U.S. App. LEXIS 9492 (1987).

Corporation does not maintain business domicile within District of Columbia merely by maintaining office and staff within District for purposes of maintaining contact with agencies of United States government. D.C. Code § 13-422. *Norair Engineering Associates, Inc. v. Noland Co.*, 365 F. Supp. 740, 1973 U.S. Dist. LEXIS 11392 (1973).

Mauritian company was not subject to personal jurisdiction in District of Columbia in action seeking damages arising out of relocation of Chagos natives to Mauritius, even though company was affiliated with international accounting firm, company was represented in District by American company, and company was party to contract to recruit civilian employees for United States naval base in Chagos islands; claims did not arise out of company's actions in District, company's affiliation was with Swiss branch of accounting firm, agreement with American representative focused on consulting services for procurement of World Bank projects in Africa, recruitment contract was performed exclusively in Mauritius and was regulated by Mauritian law, and company did no advertising in United States, had no United States contacts, and supplied no services in United States. *Bancoult v. McNamara*, 214 F.R.D. 5, 2003 U.S. Dist. LEXIS 4370 (2003).

Discovery.

Copyright owner was not entitled to jurisdictional discovery to learn true identities, ad-

resses, and telephone numbers of unidentified participants in filesharing swarm, in action alleging participants violated Copyright Act by illegally downloading, uploading, and distributing owner's copyrighted movie over Internet, absent showing that participants from whom jurisdictional discovery was sought resided in District of Columbia within meaning of District's long-arm statute. *People Pictures v. Group of Participants in Filesharing Swarm Identified By Hash*, 831 F.Supp.2d 333, 2011 U.S. Dist. LEXIS 147859 (2011).

Under District of Columbia law, owner of copyright in adult film was not entitled to jurisdictional discovery to discover identities of 1,434 John Doe defendants who allegedly used torrent network to unlawfully download and upload film in violation of Copyright Act, absent showing that owner had good faith belief that any particular individual defendants were domiciled in District of Columbia. *West Coast Prods. v. Doe*, 280 F.R.D. 73, 2012 U.S. Dist. LEXIS 13511 (2012).

Domiciliary of District.

District court for District of Columbia had personal jurisdiction over attorney in legal malpractice action, where attorney was domiciliary of District of Columbia at time action was initiated and attorney was served with process in District of Columbia. D.C. Code 1981, § 13-422. *Proctor v. Morrissey*, 979 F. Supp. 29, 1997 U.S. Dist. LEXIS 17521 (1997).

District court did not have jurisdiction over Central Intelligence Agency (CIA) officials in their individual capacities under District of Columbia statute providing for exercise of personal jurisdiction over persons domiciled in or maintaining principal place of business in District of Columbia; plaintiff merely listed District of Columbia mailing addresses at CIA for officials and made no allegations regarding residences or principal places of business. D.C. Code 1981, § 13-422. *Dickson v. United States*, 831 F. Supp. 893, 1993 U.S. Dist. LEXIS 12544 (1993).

Probate court in District of Columbia had requisite personal jurisdiction over patient to appoint guardian or conservator for her, even after patient's niece, who had a health care proxy, moved patient to New York; patient was unquestionably a domiciliary of District at time she was hospitalized and petition was filed and served on her, and there was no evidence that patient intended to forsake District and resettle in New York. In *re Orshansky*, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

Factors.

Persistent conduct undertaken in a person's individual capacity may constitute "transacting business," for purposes of determining whether district court has personal jurisdiction over

that person under District of Columbia's long-arm statute. *Ballard v. Holinka*, 601 F.Supp.2d 110, 2009 U.S. Dist. LEXIS 15759 (2009).

Portion of personal jurisdiction analysis requiring district court to determine whether jurisdiction satisfies due process requirements turns on whether a defendant's "minimum contacts" with District of Columbia establish that maintenance of suit does not offend traditional notions of fair play and substantial justice. *Ballard v. Holinka*, 601 F.Supp.2d 110, 2009 U.S. Dist. LEXIS 15759 (2009).

In determining whether it could exercise personal jurisdiction over federal prison warden, a non-resident defendant, in prisoner's action under §§ 1983 and Administrative Procedure Act, district court would engage in two-part inquiry; first, it was required to determine whether jurisdiction could be exercised under District of Columbia's long-arm statute, and, second, it was required to determine whether exercise of personal jurisdiction satisfied due process requirements. *Ballard v. Holinka*, 601 F.Supp.2d 110, 2009 U.S. Dist. LEXIS 15759 (2009).

Court engages in a two-part inquiry to determine whether it may exercise personal jurisdiction over a non-resident defendant; first, the court must determine whether jurisdiction may be exercised under the district's long-arm statute, and second, the court must determine whether the exercise of personal jurisdiction satisfies due process requirements. *Simpson v. Fed. Bureau of Prisons*, 496 F.Supp.2d 187, 2007 U.S. Dist. LEXIS 55745 (2007).

Fiduciary shield.

Under District of Columbia law, the corporation ordinarily insulates the individual employee from the court's personal jurisdiction; this doctrine is termed the fiduciary shield. *Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell*, 578 F.Supp.2d 164, 2008 U.S. Dist. LEXIS 75441 (2008).

In general.

Plaintiff's assertion that venue in District of Columbia was proper because he was denied access to courts in Seventh Circuit was insufficient to establish personal jurisdiction over nonresident defendants in action concerning dispute over property located in Wisconsin, absent assertion that any defendant lived in or had principal place of business in District, existence of adequate basis to assert specific personal jurisdiction under District's long-arm statute, or allegation that any defendant had contacts with District, plaintiff's alleged harm arose from defendants' conduct in transacting business or supplying services in District, or occurrence of tortious injury in District. *Lammers Kurtz v. United States*, 779 F.Supp.2d 50, 2011 U.S. Dist. LEXIS 44548 (2011).

Exercise of personal jurisdiction over federal prison warden, who was non-resident, in her individual capacity under District of Columbia's long-arm statute, in prisoner's action under §§ 1983 and Administrative Procedure Act, was not appropriate; warden did not transact any business or contracts to supply services in District, warden did not cause any tortious injury in District, prisoner, who was incarcerated in another state, suffered no injury in District, and warden could not have reasonably anticipated being hauled into court in District. *Ballard v. Holinka*, 601 F.Supp.2d 110, 2009 U.S. Dist. LEXIS 15759 (2009).

Federal district court in District of Columbia did not have personal jurisdiction under District of Columbia long-arm statute over Director of Virginia Department of Corrections (VDOC), Warden of state prison, and individuals or entities employed by VDOC, in §§ 1983 lawsuit brought by prisoner of District of Columbia who was subject to prisoner custody arrangement with Virginia and who alleged that he was subject to variety of constitutional deprivations, since Virginia defendants did not live in District of Columbia, they did not transact business in District, and all acts alleged by prisoner to connect defendants to forum related to actions taken in their official capacities. *Ibrahim v. District of Columbia*, 357 F.Supp.2d 187, 2004 U.S. Dist. LEXIS 27119 (2004).

District of Columbia federal court was not available forum for habeas corpus petition of Naval Reserve officer who sought to restrain his deployment to Afghanistan; District of Columbia was not officer's domicile, had no proper custodian within its reach against whom district court's writ could run, and it generated no deployment orders to officer. *Blackmon v. England*, 323 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 12657 (2004).

General personal jurisdiction did not exist over Swedish national telephone company in federal district court sitting in District of Columbia, in consultancy firm's action for damages, return of property, and cease and desist order arising from Swedish corporation's alleged takeover of consultancy firm's Swedish operations, when telephone company was not domiciled in, organized under laws of, or maintaining principal place of business in District of Columbia, telephone company did not have continuing corporate presence in District of Columbia directed at advancing its corporate directives, and had no real property there, did not contract to insure or to supply services there, did not have marital or parent-and-child relationship there, and caused no injury there by either local or foreign act or omission. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

Federal court in District of Columbia lacked personal jurisdiction over defendants in negligence action that arose from automobile accident; plaintiff and defendant both resided in Virginia, and accident occurred in Virginia. Fed.R.Civ.Proc. Rule 4(k), 18 U.S.C.; D.C. Code 1981, §§ 13-422, 13-423. *Jennings v. Coutscoudis*, 941 F. Supp. 5, 1996 U.S. Dist. LEXIS 15766 (1996), affirmed by 1997 U.S. App. LEXIS 19039 (D.C. Cir. June 17, 1997).

Account, which agent of Jordanian currency exchange held in District of Columbia subsidiary of Jordanian banking concern, but which was not involved in any claim at issue, could not form basis of personal jurisdiction under District of Columbia long-arm statute. D.C. Code 1981, §§ 13-422, 13-423(b). *First Chicago International v. United Exchange Co.*, 655 F. Supp. 787, 1987 U.S. Dist. LEXIS 2022 (1987), affirmed in part and reversed in part by 836 F.2d 1375, 267 U.S. App. D.C. 27, 1988 U.S. App. LEXIS 490, 10 Fed. R. Serv. 3d (Callaghan) 584 (1988).

In action by employees against employer and two union locals alleging that shifting of three of employer's stores from one union local's jurisdiction to another violated employer's collective bargaining agreement reserving jurisdiction over the stores to specified union local, the District Court for the District of Columbia lacked in personam jurisdiction over the union local to whose jurisdiction the stores were shifted, as the only evidence of union local's contacts with the District of Columbia involved the filing of a jurisdictional claim with the international union, which was not party to the action, and appearances at hearings on the claim held in the District of Columbia. D.C. Code §§ 13-422, 13-423. *Doby v. Safeway Stores, Inc.*, 505 F. Supp. 934, 1981 U.S. Dist. LEXIS 11473 (1981).

In personam jurisdiction generally is determined as of the commencement of an action. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

Mere entry into District of Columbia by non-resident for purpose of contacting federal government agencies cannot serve as basis for exercising in personam jurisdiction. *Lex Tex, Ltd. v. Skillman*, 579 A.2d 244, 1990 D.C. App. LEXIS 207 (1990).

Jurisdiction did not arise in a paternity suit, since putative paternity was not derivative from the transaction of any business in the District and since employment in the District did not constitute "transacting business." *T.M.P. v. G.C.M.*, 124 WLR 233 (Super. Ct. 1995).

Non-residents.

Exercise of personal jurisdiction over nonresident employer, under District of Columbia's long-arm statute, would not comport with prin-

ciples of due process in Title VII action alleging employer prevented discharged employee from securing subsequent employment by providing him "bad references," even if employer had contracts with federal government, absent showing that employer had invoked benefits and protections of District's laws by transacting business or supplying services within District, or any showing that employee had suffered injury within District. *Lance v. Wilson*, 811 F.Supp.2d 106, 2011 U.S. Dist. LEXIS 101432 (2011).

Mere fact that federal prison warden, who was non-resident, was employee of Bureau of Prisons (BOP), which was headquartered in District of Columbia, did not render her subject to suit in her individual capacity in District, in prisoner's action under §§ 1983 alleging violations of his First Amendment rights, and under Administrative Procedure Act. *Ballard v. Holinka*, 601 F.Supp.2d 110, 2009 U.S. Dist. LEXIS 15759 (2009).

Under District of Columbia law, the court may exercise specific personal jurisdiction over a non-resident if jurisdiction is applicable under the District of Columbia's long-arm statute. *Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell*, 578 F.Supp.2d 164, 2008 U.S. Dist. LEXIS 75441 (2008).

Personal jurisdiction.

In employee's action claiming sexual harassment in violation of Title VII and violation of Equal Protection Clause by coworker and owner of Florida job corps center (JCC), providing education and career technical training program administered by United States Department of Labor, employee's single allegation that owner and coworker engaged in contractual business with federal government was not sufficient for district court to examine whether alleged contractual contacts with District of Columbia (D.C.) were systematic or continuous, as necessary to satisfy due process requirements for exercise of general personal jurisdiction over coworker and owner, under D.C.'s statute authorizing exercise of personal jurisdiction over person domiciled in, organized under laws of, or maintaining principal place of business in D.C. as to any claim for relief. *Bond v. ATSI/Jacksonville Job Corps Ctr.*, 811 F.Supp.2d 417, 2011 U.S. Dist. LEXIS 106210 (2011).

If a plaintiff does not plead that a District of Columbia court has personal jurisdiction over a defendant based on his domicile or place of business, that court engages in a two-part inquiry to determine if it has personal jurisdiction over the defendants: (1) the court must determine whether there is a basis for personal jurisdiction under District of Columbia's long-arm statute, and (2) the court must determine whether the exercise of personal jurisdiction

would comport with the requirements of due process. *Gomez v. Aragon*, 705 F.Supp.2d 21, 2010 U.S. Dist. LEXIS 37566 (2010).

Non-resident mortgage company executive did not have continuous and systematic contacts with District of Columbia, as required for federal district court to have general jurisdiction over executive in his personal capacity in action alleging company violated Fair Housing Act; executive lived and worked in Kansas, did not maintain an office in the District of Columbia, and did not own any real property in the District of Columbia. *Nat'l Cmty. Reinvestment Coalition v. NovaStar Fin., Inc.*, 631 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 53130 (2009).

General personal jurisdiction under District of Columbia law did not apply to German company with headquarters located in that country. *Papst v. Konica-Minolta Photo Imaging, Inc.* (In re Papst Licensing GMBH & Co. KG Litig.), 590 F.Supp.2d 94, 2008 U.S. Dist. LEXIS 100500 (2008), dismissed by 602 F. Supp. 2d 10, 2009 U.S. Dist. LEXIS 18997, 72 Fed. R. Serv. 3d (Callaghan) 1224 (D.D.C. 2009).

Superior Court did not have personal jurisdiction, under a statutory provision that a District of Columbia court could exercise personal jurisdiction over a person outside the District of Columbia based on the person's enduring relationship with the District of Columbia, over a trustee of an irrevocable trust that was created under Delaware law; the trustee, which was a Delaware entity and was served with a complaint alleging that the trust settlor engaged in a conspiracy to defraud, was not domiciled and did not have its principal place of business in the District of Columbia. *Matijkiw, et al. v. Strauss, et al.*, 139 WLR 1345 (Super. Ct. 2011).

Presumptions and burden of proof.

Under District of Columbia law, plaintiffs

bear the burden of establishing a factual basis for the exercise of personal jurisdiction over the defendant; in determining whether such a basis exists, factual discrepancies appearing in the record must be resolved in favor of the plaintiffs. *Burman v. Phoenix Worldwide Indus.*, 437 F.Supp.2d 142, 2006 U.S. Dist. LEXIS 46070 (2006).

Sufficiency of allegations.

Court lacked general, personal jurisdiction over individual corporate employees, where complaint did not allege facts regarding employees' residences or principal places of business. D.C. Code 1981, § 13-422. *Richard v. Bell Atl. Corp.*, 976 F. Supp. 40, 1997 U.S. Dist. LEXIS 20076 (1997).

District of Columbia Superior Court could not exercise personal jurisdiction over customs officials employed in Florida, in inmate's pro se action against officials in their individual capacities alleging illegal seizure of property and failure to comply with Freedom of Information Act (FOIA); only one of the officials named in suit was alleged to have resided or been employed in District, and allegations as to such official were vague and conclusory. 5 U.S.C. § 552; D.C. Code 1981, §§ 13-422, 13-423. *Valdes v. Gordon*, 949 F. Supp. 21, 1996 U.S. Dist. LEXIS 19489 (1996), affirmed by 1997 U.S. App. LEXIS 19041 (D.C. Cir. June 5, 1997).

Employees made no allegations regarding residences or principal places of business of any defendant sufficient to so general jurisdiction under D.C. Code. D.C. Code 1981, § 13-422. *Richard v. Bell Atl. Corp.*, 946 F. Supp. 54, 1996 U.S. Dist. LEXIS 17637 (1996).

§ 13-423. Personal jurisdiction based upon conduct.

(a) A District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's —

- (1) transacting any business in the District of Columbia;
- (2) contracting to supply services in the District of Columbia;
- (3) causing tortious injury in the District of Columbia by an act or omission in the District of Columbia;
- (4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia;
- (5) having an interest in, using, or possessing real property in the District of Columbia;

(6) contracting to insure or act as surety for or on any person, property, or risk, contract, obligation, or agreement located, executed, or to be performed within the District of Columbia at the time of contracting, unless the parties otherwise provide in writing; or

(7) marital or parent and child relationship in the District of Columbia if:

(A) the plaintiff resides in the District of Columbia at the time the suit is filed;

(B) such person is personally served with process; and

(C) in the case of a claim arising from a marital relationship:

(i) the District of Columbia was the matrimonial domicile of the parties immediately prior to their separation, or

(ii) the cause of action to pay spousal support arose under the laws of the District of Columbia or under an agreement executed by the parties in the District of Columbia; or

(D) in the case of a claim affecting the parent and child relationship:

(i) the child was conceived in the District of Columbia and such person is the parent or alleged parent of the child;

(ii) the child resides in the District of Columbia as a result of the acts, directives, or approval of such person; or

(iii) such person has resided with the child in the District of Columbia.

(E) Notwithstanding the provisions of subparagraphs (A) through (D), the court may exercise personal jurisdiction if there is any basis consistent with the United States Constitution for the exercise of personal jurisdiction.

(b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him.

(July 29, 1970, 84 Stat. 549, Pub. L. 91-358, title I, § 132(a); Mar. 10, 1983, D.C. Law 4-200, § 4, 30 DCR 125.)

Cross references. — Tortious injury in the District of Columbia, unfair trade practices, damages, see § 48-804.02.

Section references. — This section is referred to in § 48-80

Prior Codifications. — 1981 Ed., § 13-423. 1973 Ed., § 13-423.

Legislative history of Law 4-200. — Law 4-200, the “District of Columbia Adoption of the Uniform Child Custody Jurisdiction and Mari-

tal or Parent and Child Long-Arm Jurisdiction Amendments Act of 1982,” was introduced in Council and assigned Bill No. 4-237, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 16, 1982, and December 14, 1982, respectively. Signed by the Mayor on December 28, 1982, it was assigned Act No. 4-284 and transmitted to both Houses of Congress for its review.

CASE NOTES

ANALYSIS

Actions and proceedings.

Agents, generally.

Bases for jurisdiction.

—Consent or waiver, bases for jurisdiction.

—In general.

Conflicts of law.

Connection with injury, generally.

Conspiracy.

Construction and application.

Construction with federal law.

Contracts to supply services.

—Attorneys, contracts to supply services.

—In general.

Corporations.

—Agents, corporations.

—In general.

- Minimum contacts, corporations.
- Subsidiaries, corporations.
- Defamation.
 - Acts within District, defamation.
 - Doing business, defamation.
 - In general.
- Discovery.
- Dismissal of actions generally.
- Due process, generally.
- Establishing jurisdiction, generally.
- Estoppel.
- Exceptions.
 - Government contacts, exceptions.
 - In general.
 - News gathering, exceptions.
- Extent of jurisdiction, generally.
- Federal entities.
 - In general.
 - Law enforcement personnel, federal entities.
 - Prison officials, federal entities.
- Federal jurisdiction, generally.
- Forum non conveniens.
- General or specific jurisdiction.
 - In general.
 - Injury within District, generally.
- Insurance or surety contracts.
- Intellectual property.
 - Copyright, intellectual property.
 - In general.
 - Trademark, intellectual property.
- Marital relationships.
- Minimum contacts.
 - In general.
 - Persistent course of conduct, minimum contacts.
 - Purposeful conduct, minimum contacts.
 - Third party actions, minimum contacts.
- Municipal entities.
- Parents and children.
- Persons.
- Presumptions and burden of proof.
- Questions of fact.
- Qui tam actions.
- Real property interests.
- Remand.
- Review.
- RICO Cases.
- Service of process.
- State entities.
- Sufficiency of evidence.
- Torts outside District.
 - Connection with injury, torts outside district.
 - Course of conduct, torts outside district.
 - Doing business, torts outside district.
 - Due process, torts outside district.
 - Establishing jurisdiction, torts outside district.
 - In general.
 - Injury within District, torts outside district.
 - Minimum contacts, torts outside district.
 - Revenue derived, torts outside district.
 - Solicitation of business, torts outside district.
- Torts within District.

Transacting business.

- Communications as contacts, transacting business.
- Connection with injury, transacting business.
- Contacts within scope of employment, transacting business.
- Contracts as contacts, transacting business.
- Due process, transacting business.
- Establishing jurisdiction, transacting business.
- Extent of jurisdiction, transacting business.
- In general.
- Minimum contacts generally, transacting business.
- Negotiations as contacts, transacting business.
- Plaintiff as source of contacts, transacting business.
- Presence within District, transacting business.
- Purposeful conduct, transacting business.
- Venue generally.

Actions and proceedings.

While party seeking to invoke federal jurisdiction need only make prima facie showing of jurisdictional facts to prevail, if submitted materials raise questions of credibility or disputed questions of fact, court may take evidence at preliminary hearing to resolve these issues. D.C. Code 1973, § 13-423; U.S. Const. Amend. 14. *Mitchell Energy Corp. v. Mary Helen Coal Co.*, 524 F. Supp. 558, 1981 U.S. Dist. LEXIS 9910 (1981).

Defendant, a Maryland resident, did not waive object to District of Columbia court's personal jurisdiction over him in defamation action by filing a counterclaim after trial court had denied his initial motion to dismiss for lack of personal jurisdiction. *Charlton v. Mond*, 987 A.2d 436, 2010 D.C. App. LEXIS 8 (2010).

Agents, generally.

The District Court for the District of Columbia lacked personal jurisdiction over Secretary of the Indiana Family and Social Services Administration, under either the Due Process Clause or the District of Columbia's long-arm statute, in pro se Medicare recipient's action challenging Medicare's failure to cover cost of her prescription medications; the Secretary was sued only in her official capacity as state official, she did not reside or transact business in the District of Columbia, and even if Secretary had a duty to administer federal funds allegedly owed to recipient, she did so in Indiana on behalf of an Indiana state agency for Indiana residents. *Donnelly v. Sebelius*, 851 F.Supp.2d 109, 2012 U.S. Dist. LEXIS 44343 (2012).

Issue of whether District Court had personal jurisdiction over corporation, under District of Columbia's long-arm statute, could not be re-

solved at motion to dismiss stage of lobbyist's breach of contract action against corporation and others, because of factual dispute as to whether limited liability company (LLC) acted as an agent for corporation when it entered into the contract with lobbyist. *Plesha v. Ferguson*, 760 F.Supp.2d 90, 2011 U.S. Dist. LEXIS 5460 (2011).

Federal court in District of Columbia lacked jurisdiction under District of Columbia long-arm statute over nonresident defendant, since nonresident's limited contacts with District of Columbia were all undertaken in representational or official capacity for trade association, and no independent acts of nonresident had been alleged which would have demonstrated that he was transacting business in District of Columbia. D.C. Code 1981, § 13-423. *American Ass'n of Cruise Passengers v. Cunard Line*, 691 F. Supp. 379, 1987 U.S. Dist. LEXIS 13762 (1987), dismissed by 1988 U.S. Dist. LEXIS 16496, 1989 A.M.C. 2382, 1988-2 Trade Cas. (CCH) P68325 (D.D.C. 1988).

Since county policeman was acting as an official of the county and was acting on the county's behalf when he allegedly subjected plaintiffs to false arrest and false imprisonment in the District of Columbia, he served as an agent of the county and subjected the county to long-arm jurisdiction of the District. D.C. Code § 13-423(a)(3). *Daughtry v. Arlington County*, 490 F. Supp. 307, 1980 U.S. Dist. LEXIS 13119 (1980).

Although defendant, who had contracted with a general contractor to construct a building and who controlled disbursement of retainage money, may have known destination and purpose of subcontractor after he signed paper approving assignment to plaintiff bank of certain funds subcontractor might receive as a result of subcontractor's contract with general contractor, where defendant did not direct subcontractor to do anything on his behalf, subcontractor was not defendant's agent for purposes of the District of Columbia new long-arm jurisdictional statute. D.C. Code §§ 13-421, 13-423. *Security Bank, N. A. v. Tauber*, 347 F. Supp. 511, 1972 U.S. Dist. LEXIS 12035 (1972).

Evidence including evidence of execution and filing of limited partnership agreement showed sufficient control over forum state actor's conduct to establish, for jurisdictional purposes, agency relationship between such forum state actor and nonresident defendants, for purposes of long-arm jurisdiction. D.C. Code 1981, § 13-423(a)(1); Civil Rule 12(b)(2), 5). *Smith v. Jenkins*, 452 A.2d 333, 1982 D.C. App. LEXIS 465 (1982).

In distinguishing between agent and independent contractor for jurisdictional purposes, determinative factor is measure of control and, without control over forum state actor, nonresident defendant is not purposefully availing

itself of privilege of conducting activities within forum state. D.C. Code 1981, § 13-423(a)(1). *Smith v. Jenkins*, 452 A.2d 333, 1982 D.C. App. LEXIS 465 (1982).

Attorney, hired by Connecticut corporation and sent to District of Columbia to establish office, negotiate on behalf of corporation with Food and Drug Administration, and litigate against FDA, could sue corporation to recover fees allegedly due in superior court under District of Columbia "long-arm statute"; attorney was shown to be agent of corporation, and to have established "minimum contacts" necessary for personal jurisdiction over corporation in District to be consistent with due process. D.C. Code §§ 13-423, 13-423(a)(1), 17-305(a); U.S. Const. Amends. 1, 5, 14. *Rose v. Silver*, 394 A.2d 1368, 1978 D.C. App. LEXIS 370 (1978).

Bases for jurisdiction.

— Consent or waiver, bases for jurisdiction.

Consent order between British tobacco company, and Federal Trade Commission (FTC), in which FTC approved company's purchase of American subsidiary, could not form basis for exercise of personal jurisdiction over company under District of Columbia long-arm statute, on basis that company had transacted business in District, in action in which United States sought to recover health care expenses incurred in treating patients for smoking-related illnesses, and to disgorge profits under Racketeer Influenced and Corrupt Organizations Act (RICO), where consent order expressly stated that company consented to jurisdiction in District only for purposes of that agreement, and any proceedings arising out of or to enforce agreement. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

In absence of in personam jurisdiction, court may obtain jurisdiction over person by consent or waiver. *Ausbrooks v. Ausbrooks*, 493 A.2d 324, 1985 D.C. App. LEXIS 400 (1985).

Consent to or waiver of jurisdiction over a person may be implied from conduct. *Ausbrooks v. Ausbrooks*, 493 A.2d 324, 1985 D.C. App. LEXIS 400 (1985).

— In general.

District court lacked personal jurisdiction over federal officials in their individual capacities under District of Columbia long-arm statute in Bivens action alleging that officials denied federal prisoner promotions and back pay for his employment with Department of Justice's Federal Prison Industries (UNICOR) program while in Federal Bureau of Prisons' (BOP) custody; officials worked at federal prison in West Virginia and did not reside in District of

Columbia, and officials had not transacted business, supplied services, or caused tortious injury to prisoner within District of Columbia. *Morton v. Bolyard*, 810 F.Supp.2d 112, 2011 U.S. Dist. LEXIS 102146 (2011).

Arrestee who alleged he was falsely arrested and prosecuted in West Virginia on drug charge failed to plead any jurisdictional facts showing that case fell under District of Columbia's long-arm statute, and thus District of Columbia lacked specific personal jurisdiction over action. *Brooks v. Harris*, 808 F.Supp.2d 206, 2011 U.S. Dist. LEXIS 99530 (2011).

Allegations by applicant for admission to the bar that he was harmed by allegedly libelous letter sent by his ex-wife from Maryland to the Committee on Admissions (COA) in the District of Columbia were insufficient to plead connection between alleged tort and any act committed by ex-wife in District, as required for personal jurisdiction over ex-wife in District of Columbia for applicant's action alleging various claims against ex-wife, including intentional interference with prospective economic advantage and civil conspiracy. *Stoddard v. Carlin*, 799 F.Supp.2d 57, 2011 U.S. Dist. LEXIS 83296 (2011).

If a defendant does not reside within or maintain a principal place of business in the District of Columbia, then the District's long-arm statute, provides the only basis on which a court may exercise personal jurisdiction over the defendant. *Quality Air Servs., L.L.C. v. Milwaukee Valve Co.*, 567 F.Supp.2d 96, 2008 U.S. Dist. LEXIS 55431 (2008).

A District of Columbia court engages in two-part inquiry in order to determine whether it may exercise personal jurisdiction over a non-resident defendant; first, the court must determine whether jurisdiction may be exercised under District of Columbia's long-arm statute and, second, court must determine whether exercise of personal jurisdiction satisfies due process requirements. *Metcalf v. Fed. Bureau of Prisons*, 530 F.Supp.2d 131, 2008 U.S. Dist. LEXIS 579 (2008).

Difference between jurisdiction under Clayton Act section providing for proper forum in which to bring antitrust action against corporation and District of Columbia (D.C.) long-arm statute is that while both look at contacts with district, under Clayton Act provision transactions do not have to be related to cause of action or subject matter of suit, while under D.C. long-arm statute there must be connection between jurisdictional contacts and cause of action. *Diamond Chem. Co. v. Atofina Chems., Inc.*, 268 F.Supp.2d 1, 2003 U.S. Dist. LEXIS 10549 (2003).

District of Columbia's long-arm statute is only basis upon which personal jurisdiction may be obtained over defendants who do not reside within or maintain principal place of

business in District of Columbia. D.C. Code 1981, § 13-423. *Meyer v. Federal Bureau of Prisons*, 940 F. Supp. 9, 1996 U.S. Dist. LEXIS 13387 (1996).

District of Columbia long-arm statute is the only basis upon which personal jurisdiction may be obtained over defendants who do not reside within or maintain principal place of business in District of Columbia. D.C. Code 1981, § 13-423. *Meyer v. Federal Bureau of Prisons*, 929 F. Supp. 10, 1996 U.S. Dist. LEXIS 7344 (1996).

District of Columbia long arm statute is the only basis upon which personal jurisdiction may be obtained over defendants who do not reside within or maintain principal place of business in District of Columbia. D.C. Code 1981, § 13-423. *Meyer v. Reno*, 911 F. Supp. 11, 1996 U.S. Dist. LEXIS 2829 (1996).

Where there is no indication that defendant resides in District of Columbia, District of Columbia long-arm statute provide only means through which district court may obtain personal jurisdiction over defendant. D.C. Code 1981, § 13-423(a)(1). *Dickson v. United States*, 831 F. Supp. 893, 1993 U.S. Dist. LEXIS 12544 (1993).

In addition to District of Columbia long-arm statute, District Court for the District of Columbia can obtain jurisdiction over foreign corporation doing business in district pursuant to broader "doing business" statute. D.C. Code 1981, §§ 13-334, 13-423. *Ross v. Product Dev. Corp.*, 736 F. Supp. 285, 1989 U.S. Dist. LEXIS 11858 (1989).

Unlike District of Columbia's long-arm statute, broader "doing business" statute confers jurisdiction over defendant corporation for all purposes, not merely for those claims arising out of defendant's contacts with district. D.C. Code 1981, §§ 13-334, 13-423. *Ross v. Product Dev. Corp.*, 736 F. Supp. 285, 1989 U.S. Dist. LEXIS 11858 (1989).

Under statute authorizing service of process on agent of foreign corporation doing business in District of Columbia, foreign corporation which carries on consistent pattern of regular business activity within jurisdiction is subject to general jurisdiction of District of Columbia courts, upon proper service, and not merely for suits arising out of its activity in District of Columbia, and this is in direct contrast to "transacting any business" provision of long-arm statute, under which jurisdiction is limited to claims arising from particular transaction of business which forms basis of jurisdiction. D.C. Code §§ 13-334(a), 13-423, 13-423(a)(1). *AMAF International Corp. v. Ralston Purina Co.*, 428 A.2d 849, 1981 D.C. App. LEXIS 242 (1981).

Before the superior court of the District of Columbia may exercise personal jurisdiction over a nonresident defendant, service of process over that nonresident must be authorized by

statute permitting a jurisdictional reach coextensive with that permitted by due process clause. D.C. Code § 13-423; U.S. Const. Amend. 14. *Berwyn Fuel, Inc. v. Hogan*, 399 A.2d 79, 1979 D.C. App. LEXIS 311 (1979).

Long-arm statute enacted as part of Court Reorganization Act of 1970 exists independently of Motor Vehicle Safety Responsibility Act as an alternative, independent method for acquiring in personam jurisdiction over a non-resident motorist. D.C. Code §§ 11-101 et seq., 13-401 et seq., 13-402, 13-423(a)(3), 13-431, 40-417 to 40-498c, 40-423, 40-423(a). *Liberty Mut. Ins. Co. v. Burgess*, 308 A.2d 775, 1973 D.C. App. LEXIS 334 (1973).

Conflicts of law.

Florida statute precluding recovery of real estate sales commission for sale of Florida land unless real estate broker was duly registered and licensed by Florida was intended to protect Florida land purchasing community from disreputable real estate dealers, primarily local dealers, and should not govern case where plaintiff broker was approached by defendant development corporation's agent in the District of Columbia, the contract was formed in the District of Columbia to be performed in the District, in Florida and in other Eastern states, and where to give precedence to District's interest in insuring performance of the contract would be unduly hampered by application of Florida law, while not significantly advancing Florida's public policy. D.C. Code § 13-423(a)(1); Fla. Stat. § 475.41. *Dorothy K. Winston & Co. v. Town Heights Dev., Inc.*, 376 F. Supp. 1214, 1974 U.S. Dist. LEXIS 9103 (1974).

Connection with injury, generally.

Under District of Columbia law, Swiss company was not subject to specific personal jurisdiction in District in action alleging that corporation obtained plaintiff's interest in business that was confiscated by Uzbekistan's government, where plaintiff's principal place of business was in Uzbekistan, and there was no evidence that any transfers or transactions relevant to plaintiff's claims for relief occurred in District. *Roz Trading Ltd. v. Zeromax Group, Inc.*, 517 F.Supp.2d 377, 2007 U.S. Dist. LEXIS 72056 (2007).

Under District of Columbia law, Delaware banking associations were not subject to specific personal jurisdiction in District in action to recover damages arising from fraudulently endorsed check, even though one association's subsidiary had branch locations in District, where associations had no agent, did no business, owned no property, and maintained no bank accounts in District, and there was no evidence that checking transaction on which plaintiff based its claims had connection with District. *Capital Bank Int'l, Ltd. v. Citigroup,*

Inc., 276 F.Supp.2d 72, 2003 U.S. Dist. LEXIS 13279 (2003).

Under District of Columbia long-arm statute, plaintiff's jurisdictional allegations must arise from the same conduct of which plaintiff complains. D.C. Code 1981, § 13-423(b). *COMSAT Corp. v. Finshippyards S.A.M.*, 900 F. Supp. 515, 1995 U.S. Dist. LEXIS 14701 (1995).

District of Columbia long-arm statute bars any claims unrelated to particular transaction carried out in district upon which personal jurisdiction is allegedly based; claim itself must have arisen from business transacted in district or there is no jurisdiction. D.C. Code 1981, § 13-423(b). *Novak-Canzeri v. Saud*, 864 F.Supp. 203, 1994 U.S. Dist. LEXIS 19432 (1994).

Even if requiring Assistant United States Attorney (AUSA) licensed in New Mexico but employed in the District of Columbia to file annual registration statement with New Mexico bar, to comply with New Mexico rules for continuing legal education, and to pay annual licensing fee were sufficient activity to establish "continuing obligation" for jurisdictional purposes, it did not establish jurisdiction over the Chief Disciplinary Counsel of the Disciplinary Board of the Supreme Court of New Mexico, where she was not involved in those regulatory activities, which were, instead, dictated by the Supreme Court of New Mexico. U.S. Const. Amend. 5; D.C. Code 1981, § 13-423(a)(1). *United States v. Ferrara*, 847 F. Supp. 964, 1993 U.S. Dist. LEXIS 7558 (1993), affirmed by 54 F.3d 825, 311 U.S. App. D.C. 421, 1995 U.S. App. LEXIS 11789 (1995).

Provision of District of Columbia long-arm statute stating that "[w]hen jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him" limits reach of prior subsection allowing for exercise of personal jurisdiction over claims arising from transactions of business in district, even where case involves "transitory" tort claim rather than "local" contract claim or where plaintiff is resident of district. D.C. Code 1981, § 13-423(a)(1), (b). *Ross v. Product Dev. Corp.*, 736 F. Supp. 285, 1989 U.S. Dist. LEXIS 11858 (1989).

Account, which agent of Jordanian currency exchange held in District of Columbia subsidiary of Jordanian banking concern, but which was not involved in any claim at issue, could not form basis of personal jurisdiction under District of Columbia long-arm statute. D.C. Code 1981, §§ 13-422, 13-423(b). *First Chicago International v. United Exchange Co.*, 655 F. Supp. 787, 1987 U.S. Dist. LEXIS 2022 (1987), affirmed in part and reversed in part by 836 F.2d 1375, 267 U.S. App. D.C. 27, 1988 U.S. App. LEXIS 490, 10 Fed. R. Serv. 3d (Callaghan) 584 (1988).

Court lacked personal jurisdiction over foreign corporation in action seeking to relitigate decision of Trademark Trial and Appeal Board dismissing opposition to corporation's trademark application since claim arose from Board's decision, not from corporation's contacts with district. D.C. Code 1981, § 13-423(b). *Cardwell v. Investor's Analysis, Inc.*, 620 F. Supp. 1395, 1985 U.S. Dist. LEXIS 14277 (1985).

Under District of Columbia "long-arm" statute provision that District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from that person's transacting any business in District or causing tortious injury in District by an act or omission in the District, both the act and the effect, or injury, must take place in District. D.C. Code § 13-423(a). *Mandelkorn v. Patrick*, 359 F. Supp. 692, 1973 U.S. Dist. LEXIS 13726 (1973).

In examining nonresident defendant's contacts with District of Columbia for determination of whether court has personal jurisdiction, focus is placed on relationship among defendant, the forum, and the litigation. U.S. Const. Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

Nexus requirement of District of Columbia long-arm statute bars only claims unrelated to the acts forming the basis for personal jurisdiction. D.C. Code 1981, § 13-423(b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

For proper jurisdiction, long-arm statute requires that claim raised have a discernible relationship to the business transacted in the District of Columbia. D.C. Code 1981, § 13-423(b). *Trerotola v. Cotter*, 601 A.2d 60, 1991 D.C. App. LEXIS 343 (1991).

Limitation in long-arm statute that claim for relief must arise from transaction of business in District of Columbia in order to assert personal jurisdiction over nonresident defendant is meant to prevent assertion of claims that do not bear some relationship to acts in District of Columbia relied upon to confer jurisdiction; however, once claim is related to acts in District, statute does not require that scope of claim be limited to activity within jurisdiction. D.C. Code §§ 13-423, 13-423(b). *Cohane v. Arpeja-California, Inc.*, 385 A.2d 153, 1978 D.C. App. LEXIS 448 (1978), writ of certiorari denied by 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651, 1978 U.S. LEXIS 3936 (1978).

Conspiracy.

Since the bare allegation of conspiracy or agency is insufficient to establish personal jurisdiction under the District of Columbia long-arm statute, a plaintiff asserting personal ju-

risdiction under a conspiracy theory must allege specific acts connecting the defendant with the forum. *Second Amendment Foundation v. U.S. Conference of Mayors*, 274 F.3d 521, 2001 U.S. App. LEXIS 27009 (C.A.D.C. 2001).

Though defendants allegedly acted as coconspirators, they were not subject to personal jurisdiction in District of Columbia where there was failure to allege a specific tortious act in the District by any of the alleged coconspirators. D.C. Code 1981, § 13-423(a), (a)(3). *Reuber v. United States*, 750 F.2d 1039, 1984 U.S. App. LEXIS 16101 (C.A.D.C. 1984).

Conclusory statement that nonresident defendants were "alleged coconspirators" did not constitute prima facie showing necessary to carry burden of establishing personal jurisdiction under District of Columbia long-arm statute. D.C. Code 1981, § 13-423. *Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 1983 U.S. App. LEXIS 14944 (C.A.D.C. 1983).

Buyer of company that produced test to screen for Methicillin Resistant *Staphylococcus aureus* bacteria (MRSA) failed to plead conspiracy between selling shareholders and attorney with particularity, as required to establish conspiracy jurisdiction under District of Columbia's long-arm statute; beyond alleging that attorney represented selling shareholders, there were no facts or fair inferences from facts to support element of an agreement between parties to participate in an unlawful act. *3M Co. v. Boulter*, 842 F.Supp.2d 85, 2012 U.S. Dist. LEXIS 12860 (2012), appeal dismissed by 2012 U.S. App. LEXIS 24828 (D.C. Cir. Oct. 19, 2012), amended by 2012 U.S. Dist. LEXIS 151231 (D.D.C. Oct. 22, 2012).

Individuals allegedly exposed to fungicide used on bananas at plantations in Ecuador could not establish conspiracy jurisdiction under District of Columbia's long-arm statute based on either organization's alleged participation in a conspiracy with related companies or its alleged agency relationship with these companies, where the court had dismissed all of the individuals' claims against these companies. *Orellana v. CropLife Int'l*, 740 F.Supp.2d 33, 2010 U.S. Dist. LEXIS 100743 (2010).

District Court for the District of Columbia (D.C.) could not exercise personal jurisdiction pursuant to the conspiracy theory of jurisdiction over nonresident United States ferrosilicon producers in Brazilian ferrosilicon producers' suit alleging that United States producers submitted fraudulent petition to the International Trade Commission (ITC) that sought imposition of import tariffs on foreign producers, even if United States producers were co-conspirators of a ferrosilicon producer organization that did business in D.C., absent any overt act by the organization in D.C. in furtherance of the conspiracy. *Companhia Brasileira Carbureto de Calcio-CBCC v. Applied Industrial Materials*

Corp., 698 F.Supp.2d 109, 2010 U.S. Dist. LEXIS 29157 (2010).

Bare allegations of civil conspiracy between foreign private-security corporation and government contractor which had substantial contacts within District of Columbia were insufficient to establish conspiracy jurisdiction in District of Columbia district court, in action brought by survivor of Iraqi citizen alleging that corporation's personnel shot and killed citizen in Iraq. *Estate of Manook v. Research Triangle Inst., Int'l*, 693 F.Supp.2d 4, 2010 U.S. Dist. LEXIS 17257 (2010).

Bare allegations of civil conspiracy between foreign private-security corporation and government contractor which had substantial contacts within District of Columbia were insufficient to establish conspiracy jurisdiction in District of Columbia district court, in action brought by survivor of Iraqi citizen alleging that corporation's personnel shot and killed citizen in Iraq. *Estate of Manook v. Research Triangle Inst., Int'l*, 693 F.Supp.2d 4, 2010 U.S. Dist. LEXIS 17257 (2010).

So long as any one co-conspirator commits at least one overt act in the forum jurisdiction sufficient to establish long-arm jurisdiction over that person and the act committed is in furtherance of the conspiracy, there is personal jurisdiction over all members of the conspiracy under the District of Columbia subsection of the long-arm statute that governs personal jurisdiction based upon conduct of an agent. *FC Inv. Group LC v. IFX Mkts., Ltd.*, 479 F.Supp.2d 30, 2007 U.S. Dist. LEXIS 7919 (2007), affirmed by 529 F.3d 1087, 381 U.S. App. D.C. 383, 2008 U.S. App. LEXIS 13312 (2008).

In order to attribute the acts of one co-conspirator to another for jurisdictional purposes under the District of Columbia subsection of the long-arm statute that governs personal jurisdiction based upon conduct of an agent, plaintiffs must adequately allege: (1) the existence of a civil conspiracy, (2) the defendant's participation in the conspiracy, and (3) an overt act by a co-conspirator within the forum, subject to the long-arm statute, and in furtherance of the conspiracy. *FC Inv. Group LC v. IFX Mkts., Ltd.*, 479 F.Supp.2d 30, 2007 U.S. Dist. LEXIS 7919 (2007), affirmed by 529 F.3d 1087, 381 U.S. App. D.C. 383, 2008 U.S. App. LEXIS 13312 (2008).

Conspiracy jurisdiction under the District of Columbia subsection of the long-arm statute that governs personal jurisdiction based upon conduct of an agent assumes that persons who enter the forum and engage in conspiratorial acts are deemed to transact business there directly; co-conspirators who never enter the forum are deemed to transact business there by an agent. *FC Inv. Group LC v. IFX Mkts., Ltd.*, 479 F.Supp.2d 30, 2007 U.S. Dist. LEXIS 7919 (2007), affirmed by 529 F.3d 1087, 381 U.S.

App. D.C. 383, 2008 U.S. App. LEXIS 13312 (2008).

Under District of Columbia law, to establish personal jurisdiction on the basis of a theory of conspiracy jurisdiction, courts require a prima facie showing of (1) a conspiracy, (2) in which the defendant participated, and (3) a co-conspirator's overt act within the forum, subject to the long-arm statute and in furtherance of the conspiracy. *Jin v. Ministry of State Sec.*, 335 F.Supp.2d 72, 2004 U.S. Dist. LEXIS 17862 (2004).

Under District of Columbia long-arm statute, courts have jurisdiction over a defendant on the basis of the acts of his co-conspirator; the defendant's co-conspirator is deemed to be his agent. *Jin v. Ministry of State Sec.*, 335 F.Supp.2d 72, 2004 U.S. Dist. LEXIS 17862 (2004).

Under "conspiracy" theory of long-arm jurisdiction, district court had personal jurisdiction over non-resident sponsors of medical residency programs pursuant to the "transacting business" prong of District of Columbia long-arm statute, based on evidence that resident sponsors of such programs committed overt acts in the District of Columbia in furtherance of antitrust conspiracy to prevent competition in the hiring and compensation of resident physicians. *Jung v. Ass'n of Am. Med. Colleges*, 300 F.Supp.2d 119, 2004 U.S. Dist. LEXIS 1826 (2004).

Under "conspiracy" theory of District of Columbia long-arm jurisdiction, acts undertaken within the forum by one co-conspirator in furtherance of an alleged conspiracy may subject a non-resident co-conspirator to personal jurisdiction under the long-arm statute. *Jung v. Ass'n of Am. Med. Colleges*, 300 F.Supp.2d 119, 2004 U.S. Dist. LEXIS 1826 (2004).

United States failed to make prima facie showing that British tobacco company had conspired with its subsidiaries, who committed acts in District of Columbia, or that company had engaged in a civil conspiracy or pattern of racketeering activity with other tobacco companies, as would establish prima facie case of jurisdiction over company under District of Columbia long-arm statute, based on conspiracy theory of jurisdiction, sufficient to withstand motion to dismiss in action in which United States sought to recover health care expenses incurred in treating patients for smoking-related illnesses, and to disgorge profits under Racketeer Influenced and Corrupt Organizations Act (RICO). *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

Under District of Columbia law, "conspiracy theory of jurisdiction" provides that where a court has personal jurisdiction over the co-

conspirator of a non-resident defendant, due to overt acts committed by the co-conspirator in the forum in furtherance of the conspiracy, the co-conspirator is deemed the non-resident defendant's "agent" for purposes of the long-arm statute. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

Conspiracy jurisdiction did not exist in district court of District of Columbia when only overt act alleged with particularity was meeting that allegedly took place between coconspirators at Kazakhstan embassy and purported victim of conspiracy did not explain how meeting, which took place after crucial incidents had occurred, was used to plan conspiracy. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

Mere conclusory statements that defendants engaged in conspiracy are not sufficient to satisfy requirements of District of Columbia long-arm statute. D.C. Code 1981, § 13-423(a). *Jones v. City of Buffalo*, 901 F. Supp. 19, 1995 U.S. Dist. LEXIS 15412 (1995), affirmed by 1996 U.S. App. LEXIS 10787 (D.C. Cir. Mar. 12, 1996).

To succeed on conspiracy theory of personal jurisdiction under District of Columbia law, plaintiff must allege existence of conspiracy of which defendants were members, and overt acts committed in District in furtherance of conspiracy. D.C. Code 1981, § 13-423(a). *Wiggins v. Equifax Inc.*, 853 F. Supp. 500, 1994 U.S. Dist. LEXIS 7061 (1994).

Court lacked personal jurisdiction under District of Columbia law over employees of out-of-state corporation, despite claim that corporation and employees conspired to falsify and conceal existence of information regarding consumer, as well as to willfully and knowingly disseminate false consumer reports relating to consumer in District of Columbia; consumer failed to allege that employees were acting outside scope of their employment, or that their actions were taken solely for personal, nonbusiness motivations. D.C. Code 1981, § 13-423(a). *Wiggins v. Equifax Inc.*, 853 F. Supp. 500, 1994 U.S. Dist. LEXIS 7061 (1994).

To subject defendant to personal jurisdiction under "transacting business" section of District of Columbia's long-arm statute under conspiracy theory, there is no requirement of injury within forum. D.C. Code 1981, § 13-423(a)(1). *Dooley v. United Technologies Corp.*, 786 F. Supp. 65, 1992 U.S. Dist. LEXIS 2838 (1992).

Based on principles of agency law, under long-arm statute United States District Court for District of Columbia can exercise personal

jurisdiction over out-of-state defendants who have no direct contacts with District of Columbia if plaintiff alleges that overt act in furtherance of conspiracy was committed in District of Columbia by any member of conspiracy and resulting injury to plaintiff occurred in District of Columbia. D.C. Code 1981, § 13-423. *Dorman v. Thornburgh*, 740 F. Supp. 875, 1990 U.S. Dist. LEXIS 8671 (1990), appeal dismissed in part by, affirmed in part by 955 F.2d 57, 293 U.S. App. D.C. 364, 1992 U.S. App. LEXIS 1430 (1992).

Bald speculations that defendants are alleged coconspirators do not establish prima facie showing of personal jurisdiction over non-resident defendants, under District of Columbia long arm statute. D.C. Code 1981, § 13-423. *Hasenfus v. Corporate Air Services*, 700 F. Supp. 58, 1988 U.S. Dist. LEXIS 12765 (1988).

Dishonor of checks by District of Columbia subsidiary of Jordanian banking concern, which was not wrongful, standing alone, did not cause injury within District upon which to base conspiracy theory of personal jurisdiction over Jordanian currency exchange, its agents, and banking concern. D.C. Code 1981, § 13-423(a)(3); U.S. Const. Amend. 14. *First Chicago International v. United Exchange Co.*, 655 F. Supp. 787, 1987 U.S. Dist. LEXIS 2022 (1987), affirmed in part and reversed in part by 836 F.2d 1375, 267 U.S. App. D.C. 27, 1988 U.S. App. LEXIS 490, 10 Fed. R. Serv. 3d (Callaghan) 584 (1988).

District court lacked jurisdiction under the District of Columbia's long-arm statute over six of seven defendants in an action raising federal antitrust and pendent state law claims in connection with decision of state Sports Association to grant broadcast rights for college football game to television network, as plaintiff failed to allege any business contacts of a continuous and systematic nature linking any of the defendants with the District of Columbia. D.C. Code 1981, §§ 13-423, 13-423(a)(1). *Mizlou Television Network, Inc. v. National Broadcasting Co.*, 603 F. Supp. 677, 1984 U.S. Dist. LEXIS 21588 (1984).

Where complaint alleged a conspiracy and overt acts in furtherance of conspiracy, at least one of which overt acts was an alleged tort in District of Columbia, where such overt acts were uncontroverted and where, under plaintiff's theory, coconspirators were agents of all their fellow conspirators when acting in furtherance of conspiracy, jurisdiction could be obtained over alleged conspirators, who had no direct contacts with District, by virtue of service of process under District's "long-arm" statute. Fed. Rules Civ. Proc. rules 4(e, f), 18 U.S.C.; D.C. Code §§ 13-423, 13-423(a), (a)(3), 13-424. *Mandelkorn v. Patrick*, 359 F. Supp. 692, 1973 U.S. Dist. LEXIS 13726 (1973).

Construction and application.

Because their similarly worded statutes also

derive from the Uniform Interstate and International Procedure Act, decisions construing Maryland and Virginia long-arm statutes are entitled to substantial weight in considering long-arm statute of the District of Columbia. D.C. Code § 13-423(a)(4); Code Md.1957, art. 75, § 96(a)(4); Code Va.1950, § 8-81.2(a)(4). *Founding Church of Scientology v. Verlag*, 536 F.2d 429, 1976 U.S. App. LEXIS 8799 (C.A.D.C. 1976).

The District of Columbia subsection of the long-arm statute that governs personal jurisdiction based upon conduct of an agent permits the exercise of personal jurisdiction to the full extent permitted by the Due Process Clause of the Constitution. *FC Inv. Group LC v. IFX Mkts., Ltd.*, 479 F.Supp.2d 30, 2007 U.S. Dist. LEXIS 7919 (2007), affirmed by 529 F.3d 1087, 381 U.S. App. D.C. 383, 2008 U.S. App. LEXIS 13312 (2008).

District of Columbia's long-arm statute is given an expansive interpretation that is coextensive with the due process clause. *Gasplus, L.L.C. v. United States DOI*, 466 F.Supp.2d 43, 2006 U.S. Dist. LEXIS 88851 (2006).

The section of the District of Columbia long-arm statute authorizing jurisdiction based on the transaction of business in the District does not require physical presence in the District, but does require a business transaction that has some minimal nexus to the District. *Doe I v. State of Israel*, 400 F.Supp.2d 86, 2005 U.S. Dist. LEXIS 27471 (2005).

Under District of Columbia law, personal jurisdiction can be satisfied either by demonstrating that the court has general jurisdiction pursuant to statute, or that the court has personal jurisdiction pursuant to the District of Columbia long-arm statute. *Islamic Am. Relief Agency v. Unidentified FBI Agents*, 394 F.Supp.2d 34, 2005 U.S. Dist. LEXIS 21570 (2005), affirmed in part and remanded in part by 477 F.3d 728, 375 U.S. App. D.C. 93, 2007 U.S. App. LEXIS 3269 (2007).

Federal district court would treat District of Columbia new long-arm jurisdictional statute as applicable in action which was filed several months before the statute took effect. D.C. Code §§ 13-421, 13-423. *Security Bank, N. A. v. Tauber*, 347 F. Supp. 511, 1972 U.S. Dist. LEXIS 12035 (1972).

Retrospective application of long-arm statutes is justified on grounds that they merely establish new method of obtaining jurisdiction and effect procedural changes to secure existing substantive rights. D.C. Code §§ 13-423, 13-431. *Liberty Mut. Ins. Co. v. American Pecco Corp.*, 334 F. Supp. 522, 1971 U.S. Dist. LEXIS 10584 (1971).

Though cause of action arose in March, 1969, long-arm statute, effective date of which was February 1, 1971, could be applied to obtain jurisdiction. D.C. Code §§ 13-423, 13-431. *Lib-*

erty Mut. Ins. Co. v. American Pecco Corp., 334 F. Supp. 522, 1971 U.S. Dist. LEXIS 10584 (1971).

Statutory limitation for long-arm jurisdiction over a foreign corporation, that the claim must arise from the act or acts conferring jurisdiction over the corporation, is meant to exclude from courts of District of Columbia (D. C.) all claims that do not bear some relationship to the acts in D.C. relied upon to confer jurisdiction; however, once some relationship to acts in D.C. is established, this statutory provision does not limit the scope of the claim to activity within D.C. *Jackson v. Loews Wash. Cinemas, Inc.*, 944 A.2d 1088, 2008 D.C. App. LEXIS 111 (2008).

Congress intended to provide District of Columbia with long-arm statute similar to those of Maryland and Virginia, and in interpreting statute court must look for guidance to background of Uniform Act and Maryland and Virginia statutes as interpreted by their courts. D.C. Code § 13-423(a)(1); Code Md.1957, art. 75, § 96(a)(1); Code Va.1950, § 8-81.2(a)(1). *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*, 339 A.2d 390, 1975 D.C. App. LEXIS 439 (1975).

Unlike this section, which permits the exercise of jurisdiction only as to claims arising out of a defendant's contact with the District, § 13-334 confers jurisdiction over a defendant for all purposes. *Etchebarne-Bourdin v. Bourdin*, 124 WLR 2261 (Super. Ct. 1996).

Construction with federal law.

Employees' claims that employer violated FLSA by refusing to pay minimum wage, agreed-upon wages, and/or overtime wages for employees' cleaning services primarily performed in Virginia and retaliating by terminating employees for requesting wages did not satisfy requirements for specific jurisdiction over employer, where claims arose from activity outside forum of District of Columbia, and did not otherwise bring case within scope of District of Columbia's long-arm statute. *Azamar v. Stern*, 662 F.Supp.2d 166, 2009 U.S. Dist. LEXIS 95700 (2009).

District of Columbia's long-arm statute, granting personal jurisdiction over an individual as to a claim for relief arising from the person's transacting any business in the District of Columbia, is given an expansive interpretation that is coextensive with the Due Process Clause. *Nat'l Cmty. Reinvestment Coalition v. Novastar Fin., Inc.*, 604 F.Supp.2d 26, 2009 U.S. Dist. LEXIS 25932 (2009).

District of Columbia's long-arm jurisdictional statute applies in the absence of any federal long-arm statute. *Buesgens v. Brown*, 567 F.Supp.2d 26, 2008 U.S. Dist. LEXIS 44975 (2008).

District of Columbia's long-arm statute, which authorizes exercise of personal jurisdiction

tion based on defendant's conduct in or directed toward District of Columbia, is given an expansive interpretation that is coextensive with the Due Process Clause. *NAWA USA, Inc. v. Bottler*, 533 F.Supp.2d 52, 2008 U.S. Dist. LEXIS 7577 (2008), appeal dismissed by 2008 U.S. App. LEXIS 27993 (D.C. Cir. Dec. 15, 2008).

Contracts to supply services.

— Attorneys, contracts to supply services.

Bermuda corporation and its president, who retained services of District of Columbia law firm, had minimum degree of contact with district necessary for exercise of personal jurisdiction under District of Columbia long-arm statute in firm's action to recover under fee agreement; corporation purposefully established significant contacts by retaining firm, visiting its offices on several occasions and extensively communicating with it by telephone and mail. D.C. Code 1981, § 13-423(a)(1); U.S.C. Const.Amend. 5. *Koteen v. Bermuda Cablevision, Ltd.*, 913 F.2d 973, 1990 U.S. App. LEXIS 15781 (C.A.D.C. 1990).

Florida client was not subject to personal jurisdiction in District of Columbia in law firm's breach of contract action, even though client hired lawyers from firm's office in District and contemplated that work would be performed in District, where subject matter of engagement was Oregon proceeding, client provided no evidence of any meetings in District or telephone conversations with layers in District concerning Oregon engagement after contract was signed, and engagement lasted less than one year. *Thompson Hine LLP v. Smoking Everywhere, Inc.*, 840 F.Supp.2d 138, 2012 U.S. Dist. LEXIS 1676 (2012).

Florida client was not subject to personal jurisdiction District of Columbia in law firm's breach of contract action, even though client entered into retainer agreement to have firm represent it in dispute with Food and Drug Administration (FDA), even though attorneys in District worked on matter, where firm was Ohio partnership, retainer agreement was on firm letterhead bearing Georgia address, client did not come to District to meet with District lawyers without lawyer from Georgia office, and Georgia lawyer expanded team into District by calling upon attorneys he selected to "assist" him on matter. *Thompson Hine LLP v. Smoking Everywhere, Inc.*, 840 F.Supp.2d 138, 2012 U.S. Dist. LEXIS 1676 (2012).

Attorney who had represented landlord during tenant's eviction from Texas apartment was not subject to jurisdiction, under District of Columbia long-arm statute, for tenant's suit asserting claims under ADA, Rehabilitation Act, Fair Housing Act (FHA), and §§ 1983, since attorney had never transacted any business or contracted to supply services in D.C.,

contracted to insure or act as surety for anyone or any agreement located, executed, or to be performed in D.C., held interest in, used, or possessed real property in D.C., or had marital or parent and child relationship in D.C., and tenant's alleged injuries occurred solely in Texas. *Buesgens v. Brown*, 567 F.Supp.2d 26, 2008 U.S. Dist. LEXIS 44975 (2008).

Single visit to District of Columbia by Ohio accounting firm's audit partner did not establish District of Columbia court's personal jurisdiction over partner in connection with contribution and indemnification claims asserted by District of Columbia attorney; legal malpractice claims that were basis for attorney's claims for contribution and indemnification related to bonuses and consulting agreements that were formed before partner visited District, and partner had no other contacts with District. D.C. Code 1981, § 13-423(b). *Richter v. Analox Corp.*, 940 F. Supp. 353, 1996 U.S. Dist. LEXIS 15081 (1996).

Allegations regarding Ohio accounting firm's managing partner's visits to District of Columbia to discuss his work for corporate client and to meet with corporate client's counsel would, if partner advised client on consulting agreements and bonuses that were basis of subsequent legal malpractice claims against client's attorney, be sufficient to establish minimum contacts and constitute transacting business under District of Columbia long-arm statute for purposes of attorney's claims for indemnification and contribution against partner and firm. D.C. Code 1981, § 13-423(a)(1). *Richter v. Analox Corp.*, 940 F. Supp. 353, 1996 U.S. Dist. LEXIS 15081 (1996).

Personal jurisdiction existed over nonresident law firm under Washington D.C. long-arm statute in action brought by D.C. corporation alleging that it did not receive payment from escrow account on which firm was sole signatory where law firm deliberately and voluntarily undertook to serve as signatory, entered contract with corporation which firm knew was located in district, corporation's services were to be performed in district, and firm was to ensure that payments were made to corporation's account in district. D.C. Code 1981, §§ 13-423, 13-423(a)(1). *Quetel Corp. v. Columbia Communications Int'l*, 779 F. Supp. 183, 1991 U.S. Dist. LEXIS 18567 (1991).

Individuals who availed themselves of District of Columbia legal counsel were subject to district's long-arm statute for purposes of action by counsel seeking recovery of fees; it would not constitute unfair surprise to subject them to jurisdiction when they reasonably could have expected that much of the work would have been performed there and they made several trips to district to consult with counsel, at which alleged fraudulent misrepresentations took place. U.S. Const.Amend. 5,

14; D.C. Code 1981, § 13-423(a)(1). *Law Offices of Jerris Leonard, P.C. v. Mideast Systems, Ltd.*, 630 F. Supp. 1311, 1986 U.S. Dist. LEXIS 27105 (1986).

Nonresident who formed corporation for purpose of filing before Federal Communications Commission an application for a broadcast license was subject to jurisdiction of United States District Court for the District of Columbia in action brought by corporation's District of Columbia attorney to recover attorney fees; the nonresident initiated the business relationship with lawyer, agreed to lawyer's fee arrangements, presumably directed lawyer's work in district, and had important contacts with District, including two business trips to discuss broadcast license application and other legal matters. D.C. Code 1981, § 13-423. *Chase v. Pan-Pacific Broadcasting, Inc.*, 617 F. Supp. 1414, 1985 U.S. Dist. LEXIS 16328 (1985).

Where nonresident defendant had been a member of District of Columbia Bar, had held himself out as being a member of District of Columbia law firm with his name on firm's letterhead and in legal directory, where he was engaged in legal consultations with plaintiff client in offices of law firm, where he attended a director's firm meeting at bank in District of Columbia and transacted business in District of Columbia general meeting of bank, contacts were sufficient to give federal district court of District of Columbia personal jurisdiction over nonresident defendant in client's action for damages for breach of fiduciary relationship for conduct arising out of attorney-client relationship centered in District of Columbia jurisdiction. D.C. Code § 13-423(a)(1). *Meyers v. Smith*, 460 F. Supp. 621, 1978 U.S. Dist. LEXIS 14352 (1978).

Nonresident who secured services of District of Columbia law firm in connection with sale of out-of-state radio station was subject to personal jurisdiction in District of Columbia in action by firm to collect fee arising from sale where nonresident telephoned firm in District of Columbia, nonresident came to District of Columbia in connection with sale at least once, and firm performed services in District of Columbia. D.C. Code 1981, § 13-423(a)(1); U.S. Const. Amend. 5. *Fisher v. Bander*, 519 A.2d 162, 1986 D.C. App. LEXIS 509 (1986).

Defendant's contacts with the District of Columbia, involving visits on business-related matters to obtain assistance of law firm from which he derived economic benefits, were sufficient to subject him to jurisdiction in law firm's subsequent action to collect fees. D.C. Code 1981, § 13-423. *Hummel v. Koehler*, 458 A.2d 1187, 1983 D.C. App. LEXIS 340 (1983).

Where nonresidents solicited District of Columbia attorney to perform work in major part in District of Columbia and contract between parties was executed and performed in signifi-

cant part in the District, nonresidents were transacting business in the District within the long-arm statute and their contacts were of such a quality that assertion of personal jurisdiction by Superior Court of District of Columbia over nonresidents in attorney's suit against nonresidents to recover fees did not offend due process. (Per Curiam opinion joined by four Judges with one Judge concurring in result.) D.C. Code 1973, §§ 13-423, 13-423(a)(1); U.S. Const. Amends. 5, 14. *Mouzavires v. Baxter*, 434 A.2d 988, 1981 D.C. App. LEXIS 347 (1981), writ of certiorari denied by 455 U.S. 1006, 102 S. Ct. 1643, 71 L. Ed. 2d 875, 1982 U.S. LEXIS 1293, 50 U.S.L.W. 3713 (1982).

— In general.

Texas state and county officials were not subject to specific personal jurisdiction in District of Columbia in action alleging that they violated plaintiff's constitutional rights during divorce and child support proceedings, even though officials had obtained social security and tax identification numbers, and had entered into contracts with federal agencies to provide services in Texas, where plaintiff's claim for relief was unrelated to alleged business of obtaining social security and tax identification numbers, officials did not provide any service in District of Columbia, and plaintiff's alleged injuries all occurred in Texas. *Pease v. Burke*, 535 F.Supp.2d 150, 2008 U.S. Dist. LEXIS 17539 (2008).

Japanese citizen "transacted business," justifying exercise of personal jurisdiction under District of Columbia long-arm statute in suit alleging breach of contract to develop and distribute computer program, even though neither citizen nor agent were ever physically present in District; Japanese citizen negotiated contract that contemplated supervision and funding of program development within District, delivering copies within District, and deposits to bank account located in District. U.S.C. Const. Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1). *Schwartz v. CDI Japan*, 938 F. Supp. 1, 1996 U.S. Dist. LEXIS 8866 (1996).

Assuming contractual responsibility for development and sale of computer program was deliberate and voluntary association with forum, warranting exercise of personal jurisdiction under District of Columbia long-arm statute, in suit against Japanese corporation and citizen for breach of assumed contract. U.S.C. Const. Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1). *Schwartz v. CDI Japan*, 938 F. Supp. 1, 1996 U.S. Dist. LEXIS 8866 (1996).

The "contracting to supply services" provision of District of Columbia long-arm statute applies only to nonresident who injects itself into District by agreeing to provide some service to resident in the District, and plaintiff's own activities in the District are irrelevant. D.C.

Code 1981, § 13-423(a)(2). *COMSAT Corp. v. Finshipyards S.A.M.*, 900 F. Supp. 515, 1995 U.S. Dist. LEXIS 14701 (1995).

Mere existence of contract between nonresident and resident is not sufficient basis on which to claim jurisdiction over nonresident in the District of Columbia under the "contracting to supply services" provision of the District long-arm statute. D.C. Code 1981, § 13-423(a)(2). *COMSAT Corp. v. Finshipyards S.A.M.*, 900 F. Supp. 515, 1995 U.S. Dist. LEXIS 14701 (1995).

Amended complaint alleging that plaintiff provided visa processing services for domestic servants employed by citizens of Saudi Arabia and that citizens had not paid plaintiff for services delivered, in breach of oral contract, failed to meet requirements of "transacting business" or "contracting for services" clauses of District of Columbia long-arm statute; no factual basis was offered to support assertions that citizens entered into agreement in District whereby services were to be supplied in District, and that they engaged in conferences, discussions, and meetings in District. D.C. Code 1981, § 13-423(a), (a)(1, 2), (b). *Novak-Canzeri v. Saud*, 864 F.Supp. 203, 1994 U.S. Dist. LEXIS 19432 (1994).

Fact that Maryland physician possessed a District of Columbia license and a listing in District of Columbia phone book was not sufficient to establish personal jurisdiction over him under District of Columbia long-arm statute, where physician did not aggressively seek patients in the District and plaintiff who brought malpractice suit did not consult physician as result of any activities by physician in the District of Columbia. D.C. Code 1981, § 13-423. *Ghanem v. Kay*, 624 F. Supp. 23, 1984 U.S. Dist. LEXIS 22454 (1984).

Complaint which alleged that a phone conversation acted as a ratification of an agent's contract made between two parties physically present in the District of Columbia was sufficient, within meaning of long-arm statute's "transacting business" test, to invoke long-arm jurisdiction of the court. D.C. Code § 13-423(a)(1). *Dorothy K. Winston & Co. v. Town Heights Dev., Inc.*, 376 F. Supp. 1214, 1974 U.S. Dist. LEXIS 9103 (1974).

Where salesman, a Delaware resident, alleged in his complaint seeking commissions from his employer, a California corporation, that he was a salesman with territory covering Eastern Pennsylvania, Maryland, Delaware, and District of Columbia and that employer sold goods to clothing stores in District of Columbia and received payment for those sales, where salesman alleged that he contracted with employer to solicit orders and sell goods in District of Columbia and where employer did not deny that salesman's claim arose, at least in part, out of sales in District of Columbia,

salesman alleged sufficient facts to support personal jurisdiction over employer and exercise of jurisdiction did not offend due process. U.S. Const. Amend 14; D.C. Code § 13-423. *Cohane v. Arpeja-California, Inc.*, 385 A.2d 153, 1978 D.C. App. LEXIS 448 (1978), writ of certiorari denied by 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651, 1978 U.S. LEXIS 3936 (1978).

Corporations.

— Agents, corporations.

Lending corporation's general manager was not "more than an employee," and thus corporate shield doctrine was applicable to bar district court's personal jurisdiction, under transacting any business provision of District of Columbia's long-arm statute, over general manager in action brought by personal guarantor of loan seeking injunctive and declaratory relief regarding whether he was released from guaranty to pay loan, even though general manager had central position with corporation, absent any allegation that general manager possessed decision-making authority surrounding alleged release of guaranty. *Farouki v. Petra Int'l Banking Corp.*, 811 F.Supp.2d 388, 2011 U.S. Dist. LEXIS 106211 (2011), vacated by, remanded by 705 F.3d 515, 2013 U.S. App. LEXIS 1657 (D.C. Cir. 2013).

Acquired company was not transacting business as an agent for acquiring German company, as would have indicated purposeful availment so as to be adequate to exercise personal jurisdiction over German company under long-arm statute and consistent with the strictures of the Due Process Clause, even though German company provided acquired company's professional client a template for a letter to union pension fund trustees announcing the acquisition, where acquired company remained operationally autonomous, and German company did not exercise control over acquired company's day-to-day operations. *Heller v. Nicholas Applegate Capital Mgmt., LLC*, 498 F.Supp.2d 100, 2007 U.S. Dist. LEXIS 54091 (2007).

Small number of mailings and two phone calls made by agent of non-party foreign corporation into District of Columbia from elsewhere would not have been sufficient for federal district court to exercise specific personal jurisdiction over that foreign corporation, under District of Columbia subsection of long-arm statute that governed personal jurisdiction based upon conduct of agent, if it had been made defendant to lawsuit; thus, court could not assert conspiracy jurisdiction over other foreign corporation that was defendant to lawsuit but over which court did not have general or specific personal jurisdiction. *FC Inv. Group LC v. IFX Mkts., Ltd.*, 479 F.Supp.2d 30, 2007 U.S. Dist. LEXIS 7919 (2007), affirmed by 529

F.3d 1087, 381 U.S. App. D.C. 383, 2008 U.S. App. LEXIS 13312 (2008).

Court could not exercise conspiracy personal jurisdiction over foreign corporation, as alleged co-conspirator, that had been named as defendant in lawsuit, under District of Columbia subsection of long-arm statute that governed personal jurisdiction based upon conduct of agent, where court did not have general or specific personal jurisdiction over foreign corporation and court could not have exercised specific personal jurisdiction over alleged non-party co-conspirator even if it had been named as defendant. FC Inv. Group LC v. IFX Mkts., Ltd., 479 F.Supp.2d 30, 2007 U.S. Dist. LEXIS 7919 (2007), affirmed by 529 F.3d 1087, 381 U.S. App. D.C. 383, 2008 U.S. App. LEXIS 13312 (2008).

District court lacked jurisdiction in age discrimination suit over individual defendants who were members of employer's board of partners and principals, with exception of one member who appeared to reside in the District of Columbia as indicated in summons; complaint did not allege the residence or business of the other members of board, and plaintiffs did not allege that individual defendants were subject to jurisdiction under District of Columbia long-arm statute. *Murphy v. PriceWaterhouseCoopers, LLP*, 357 F.Supp.2d 230, 2004 U.S. Dist. LEXIS 27148 (2004), affirmed in part and reversed in part by, remanded by 595 F.3d 370, 389 U.S. App. D.C. 213, 2010 U.S. App. LEXIS 2998, 93 Empl. Prac. Dec. (CCH) P43823, 108 Fair Empl. Prac. Cas. (BNA) 795 (2010)supra.

Corporate officer's contract negotiations in the District of Columbia and his signature on a contract with a substantial connection to the District were insufficient basis for personal jurisdiction; these activities were apparently carried out on behalf of the corporation. D.C. Code 1981, § 13-423(a)(1). *Overseas Partners, Inc. v. PROGEN Musavirlik ve Yonetim Hizmetleri, Ltd. Sikerti*, 15 F.Supp.2d 47, 1998 U.S. Dist. LEXIS 12245 (1998).

Fiduciary shield doctrine, under which jurisdiction over an individual acting for a corporation, and not for himself, cannot be predicated on those actions, does not apply to District of Columbia's long-arm statute [D.C. Code 1981, § 13-423]. *Chase v. Pan-Pacific Broadcasting, Inc.*, 617 F. Supp. 1414, 1985 U.S. Dist. LEXIS 16328 (1985).

Evidence was insufficient to establish, as basis for exercise of long-arm jurisdiction by District of Columbia (D.C.) court, the existence of an agency relationship between corporate operator of movie theater in Virginia, where injuries giving rise to negligence action against operator allegedly occurred, and parent corporation that placed advertisements in D.C. newspaper for movies showing at theaters in-

cluding that one; even if operator derived financial benefit from advertisements and both corporations impliedly consented to an agency relationship, such evidence showed, at most, that they were engaged in a common enterprise and did not prove control by operator over the advertising. *Jackson v. Loews Wash. Cinemas, Inc.*, 944 A.2d 1088, 2008 D.C. App. LEXIS 111 (2008).

Activities of plaintiff in District of Columbia in performing services for benefit of nonresident defendants did not constitute a proper basis for exercise of personal jurisdiction over the nonresident corporations which were served under long-arm statute. D.C. Code § 13-423(a)(1). *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*, 355 A.2d 808, 1976 D.C. App. LEXIS 505 (1976).

Evidence supported trial court's conclusion that plaintiff suing nonresident corporate defendants for services performed for defendants in District of Columbia to obtain Environmental Protection Agency grant had acted as an independent contractor and not an agent, in case in which plaintiff sought to obtain jurisdiction over defendants under long-arm statute. D.C. Code §§ 13-423(a)(1), 17-305(a). *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*, 355 A.2d 808, 1976 D.C. App. LEXIS 505 (1976).

— In general.

Allegations that parent telecommunications company was responsible for establishing revenue targets, operational goals and guidelines, customer acquisition and support strategies for local telecommunications companies, and that consumer attempted to contact parent company to resolve billing issue, were insufficient to demonstrate that parent company directed any activity into the District of Columbia related to consumer's claims, as required to establish a basis for specific jurisdiction over parent company under District of Columbia's long arm statute. *Mazza v. Verizon Wash. DC, Inc.*, 852 F.Supp.2d 28, 2012 U.S. Dist. LEXIS 43314 (2012).

Website maintained by former members of church corporation was not interactive with users in District of Columbia, and thus website was not persistent course of conduct in D.C., as required for federal district court to have personal jurisdiction over former member or former members' new organization. *Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell*, 578 F.Supp.2d 164, 2008 U.S. Dist. LEXIS 75441 (2008).

Under District of Columbia's long-arm statute, a court does not have jurisdiction over individual officers and employees of a corporation just because the court has jurisdiction over the corporation; rather, personal jurisdiction

over the employees or officers of a corporation in their individual capacities must be based on their personal contacts with the forum and not their acts and contacts carried out solely in a corporate capacity. *Bailey v. J&B Trucking Servs.*, 577 F.Supp.2d 116, 2008 U.S. Dist. LEXIS 68241 (2008).

Federal district court sitting in District of Columbia did not have specific personal jurisdiction over Peruvian catering corporation, in suit by competitor alleging wrongful interference with competitor's catering for Peruvian mine workers; claim that corporation was alter ego of its parent was precluded by finding of no jurisdiction over parent, and corporation had no contacts whatsoever with District. *AGS Int'l Servs. S.A. v. Newmont USA Ltd.*, 346 F.Supp.2d 64, 2004 U.S. Dist. LEXIS 23061 (2004).

Parent corporation's own activities in District of Columbia were not sufficient to subject it to personal jurisdiction in District in United States' action against it for violations of Hart-Scott-Rodino Antitrust Improvements Act, even though it filed tax form with District because one of its employees was District resident, where corporation did not have officers or any persons employed in District, was not registered to do business in District, did not own, lease, or maintain any facilities or other property in District, did not have post office box, telephone, or facsimile number, and did not have bank or other financial account in District. *United States v. Smithfield Foods, Inc.*, 332 F.Supp.2d 55, 2004 U.S. Dist. LEXIS 16524 (2004).

Ordinarily, a defendant corporation's contacts with a forum may not be attributed to affiliated corporations, for the purpose of establishing personal jurisdiction over affiliated corporations. *Johnson-Tanner v. First Cash Fin. Servs.*, 239 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 335 (2003).

Whether one corporation is the alter ego of another, for purposes of establishing personal jurisdiction over one when the district court has jurisdiction over the other, is a question of law to be decided by the district court. *Johnson-Tanner v. First Cash Fin. Servs.*, 239 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 335 (2003).

Fact that out-of-state corporate officer allowed District of Columbia law firm to use her credit card to pay for some travel expenses on one occasion was insufficient to subject officer to personal jurisdiction in District of Columbia in firm's action against corporation and officer to recover attorney fees; officer was not physically present in District of Columbia, and officer did not derive personal economic benefit from transaction. *D.C. Code 1981, § 13-423(a)(1). Shapiro, Lifschitz & Shram, P.C. v. R.E. Hazard, Jr. Ltd. P'ship*, 90 F.Supp.2d 15, 2000 U.S. Dist. LEXIS 4162 (2000).

Personal jurisdiction over the corporation does not confer jurisdiction over corporate officers and employees in their individual capacities; rather, personal jurisdiction over officers of a corporation in their individual capacities must be based on their personal contacts with the forum, not their acts and contacts carried out solely in a corporate capacity. *D.C. Code 1981, § 13-423(a)(1). Overseas Partners, Inc. v. PROGEN Musavirlik ve Yonetim Hizmetleri, Ltd. Sikerti*, 15 F.Supp.2d 47, 1998 U.S. Dist. LEXIS 12245 (1998).

Complaint did not allege that individual corporate employees had personal contacts with forum for purposes of court's personal jurisdiction over employees under District of Columbia long-arm statute, where although complaint alleged multiple actions by employees, all of them arose within the scope of their official duties in corporate personnel department which included setting personnel policies, communicating with employees, conducting investigations, and making employment decisions. *D.C. Code 1981, § 13-423. Richard v. Bell Atl. Corp.*, 976 F. Supp. 40, 1997 U.S. Dist. LEXIS 20076 (1997).

District court can have personal jurisdiction over corporation, under District of Columbia law, if corporation is present in district by virtue of doing business in district, corporation is domiciled in, organized under laws of, or maintains principal place of business in district, or corporation transacts business in or causes tortious injury in district. *D.C. Code 1981, §§ 13-334(a), 13-422, 13-423. Richard v. Bell Atl. Corp.*, 946 F. Supp. 54, 1996 U.S. Dist. LEXIS 17637 (1996).

Court lacked personal jurisdiction under District of Columbia's long-arm statute over employees of out-of-state corporation, for purposes of consumer's action against corporation and employees for alleged creation and dissemination of erroneous consumer report; they were merely employees of company that had contacts with District, they did not themselves visit or conduct business in District, and fact that they may have acted in supervisory capacity over persons with contacts with District failed to create personal jurisdiction. *Fed.Rules Civ.Proc.Rule 12(b)(2), 18 U.S.C.; D.C. Code 1981, § 13-423(a). Wiggins v. Equifax Inc.*, 853 F. Supp. 500, 1994 U.S. Dist. LEXIS 7061 (1994).

Court does not have jurisdiction over individual officers and employees of corporation just because court has jurisdiction over corporation. *Fed.R.Civ.Proc. Rule 12(b)(2), 18 U.S.C.; D.C. Code 1981, § 13-423(a). Wiggins v. Equifax Inc.*, 853 F. Supp. 500, 1994 U.S. Dist. LEXIS 7061 (1994).

Personal jurisdiction did not exist pursuant to District of Columbia long-arm statute over Maryland resident in his individual capacity

where record failed to show that president had any contacts whatsoever with District of Columbia. D.C. Code 1981, § 13-423. *Masterson-Cook v. Criss Bros. Iron Works, Inc.*, 722 F. Supp. 810, 1989 U.S. Dist. LEXIS 12467 (1989), dismissed by 741 F. Supp. 985, 1990 U.S. Dist. LEXIS 10601 (D.D.C. 1990).

Claim by individuals that any contact with forum jurisdiction was in their corporate and not individual capacities was not relevant to determination of jurisdiction over claims based upon individual liability; in order to overcome motion to dismiss for want of personal jurisdiction, only a prima facie showing of jurisdiction need be made. D.C. Code 1981, § 13-423(a)(1). *Law Offices of Jerris Leonard, P.C. v. Mideast Systems, Ltd.*, 630 F. Supp. 1311, 1986 U.S. Dist. LEXIS 27105 (1986).

Mauritian company was not subject to personal jurisdiction in District of Columbia in action seeking damages arising out of relocation of Chagos natives to Mauritius, even though company was affiliated with international accounting firm, company was represented in District by American company, and company was party to contract to recruit civilian employees for United States naval base in Chagos islands; claims did not arise out of company's actions in District, company's affiliation was with Swiss branch of accounting firm, agreement with American representative focused on consulting services for procurement of World Bank projects in Africa, recruitment contract was performed exclusively in Mauritius and was regulated by Mauritian law, and company did no advertising in United States, had no United States contacts, and supplied no services in United States. *Bancoult v. McNamara*, 214 F.R.D. 5, 2003 U.S. Dist. LEXIS 4370 (2003).

Corporate president and controlling shareholder was subject to long-arm jurisdiction in District of Columbia for causing by act or omission outside district tortious injury inside district, even though his contacts were unrelated to cause of action, where he regularly did or solicited business on behalf of corporation or derived substantial revenue from goods or services used or rendered in district. D.C. Code 1981, § 13-423(a)(4). *American Directory Serv. Agency v. Beam*, 131 F.R.D. 15, 1990 U.S. Dist. LEXIS 5873 (1990).

Fact that foreign corporation did not qualify to do business within District of Columbia did not entitle creditor of corporation to maintain suit against individual officers of corporation. D.C. Code §§ 13-423(a)(1), 29-934f, 29-950. *A. Tasker, Inc. v. Amsellem*, 315 A.2d 178, 1974 D.C. App. LEXIS 348 (1974).

Plaintiffs alleged sufficient facts to show that individuals who were directors of nonprofit corporation had purposefully availed themselves of District of Columbia law, such that the

Superior Court could exercise personal jurisdiction over individuals pursuant to the District of Columbia's long-arm statute, notwithstanding the fiduciary-shield doctrine, in an action against them for, inter alia, breach of trust and breach of fiduciary duties; individuals were directors of corporation, which was established under the District of Columbia Nonprofit Corporation Act and did not have members, and were collectively vested with the exclusive right to vote on all matters affecting corporation and the responsibility to regulate corporation's internal affairs, and individuals allegedly did not act to further corporation's business but, instead, acted in contravention of corporation's purpose and exclusively for their individual benefit. *The Federation for World Peace and Unification International, et al. v. Moon, et al.*, 140 WLR 1605 (Super. Ct. 2012).

— Minimum contacts, corporations.

Mortgagee's president was not protected under fiduciary shield doctrine, on grounds that he was more than employee of mortgagee, as required for exercise of personal jurisdiction, comporting with due process requirements and District of Columbia long-arm statute, over nonresident president based not only on his personal contacts with forum but also his contacts carried out solely in corporate capacity, and thus, amendment was warranted to add president as defendant in Fair Housing Act suit alleging that mortgagee discriminated against Native Americans, people with disabilities, and African Americans, where president exerted significant influence over mortgagee's policies, procedures, and operations. *Nat'l Cmty. Reinvestment Coalition v. Novastar Fin., Inc.*, 604 F.Supp.2d 26, 2009 U.S. Dist. LEXIS 25932 (2009).

German financial company's purported contacts with the District of Columbia did not give rise to union pension fund trustees' claim that company breached fiduciary duties to the fund under ERISA by failing to disclose the change in an acquired company's key portfolio manager's role toward the fund, as would have been adequate to exercise personal jurisdiction over German company under long-arm statute and consistent with the strictures of the Due Process Clause, notwithstanding German company's concern about identifying and retaining key personnel in acquired company following the acquisition, where there was no evidence that these discussions ever referred to individual employee in question, or that German company even knew who the employee was. *Heller v. Nicholas Applegate Capital Mgmt., LLC*, 498 F.Supp.2d 100, 2007 U.S. Dist. LEXIS 54091 (2007).

German financial company's participation in jointly crafted communications strategy, including the drafting of master question and

answer documents regarding its acquisition of union pension fund trustees' California based investment manager, did not constitute minimum contacts with District of Columbia adequate to exercise personal jurisdiction over the company under the District's long-arm statute and consistent with the strictures of the Due Process Clause, where California based company was responsible for all letters informing its major clients of its acquisition, there was otherwise no evidence that German company was aware that the documents it drafted would be included in the form letters sent within the District of Columbia, and sending of the letters represented the unilateral activity of a third party or a third person. *Heller v. Nicholas Applegate Capital Mgmt., LLC*, 498 F.Supp.2d 100, 2007 U.S. Dist. LEXIS 54091 (2007).

German financial company's negotiations to purchase California based investment manager, which acted as a sub-advisor on union pension fund trustee's international investments, did not constitute minimum contacts with District of Columbia adequate to exercise personal jurisdiction over the company under the District's long-arm statute and consistent with the strictures of the Due Process Clause, absent evidence that the negotiations were in any way related to the District of Columbia or that investment manager's relationship with District of Columbia company responsible for managing trustee's assets was a factor in the acquisition. *Heller v. Nicholas Applegate Capital Mgmt., LLC*, 498 F.Supp.2d 100, 2007 U.S. Dist. LEXIS 54091 (2007).

— Subsidiaries, corporations.

Under District of Columbia law, Italian parent demonstrated active and substantial control over its American subsidiary, such that entities had unity of interest and control, and thus subsidiary's contacts with District were attributable to parent for purposes of establishing personal jurisdiction over it, where subsidiary was wholly-owned by parent, parent represented to potential clients that subsidiary was its United States branch, companies used identical logos and trademarks, companies shared website content, parent's managing director was subsidiary's president and sole director, subsidiary did not maintain separate bank account, and parent paid subsidiary's expenses. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 753 F.Supp.2d 141, 2010 U.S. Dist. LEXIS 128188 (2010).

Federal district court sitting in District of Columbia did not have specific personal jurisdiction, under District long-arm statute, over French catering corporation, in suit brought by competitor alleging that subsidiary wrongfully interfered with its business in Peru; corporation maintain no physical presence in District, and dealings within District were all conducted

by independent subsidiaries. *AGS Int'l Servs. S.A. v. Newmont USA Ltd.*, 346 F.Supp.2d 64, 2004 U.S. Dist. LEXIS 23061 (2004).

Parent corporation that was charged with violating Hart-Scott-Rodino Antitrust Improvements Act as result of its investment subsidiary's acquisition of voting securities in competitor was not subject to personal jurisdiction in District of Columbia as result of other subsidiaries' sales to stores in District, where other subsidiaries were not involved in alleged violations, and investment subsidiary did not transact business in District. *United States v. Smithfield Foods, Inc.*, 332 F.Supp.2d 55, 2004 U.S. Dist. LEXIS 16524 (2004).

Mere ownership of stock in subsidiary is insufficient to establish that parent corporation exercises sufficient control over subsidiary to warrant exercise of personal jurisdiction over parent in antitrust action based on subsidiary's activities in district. *United States v. Smithfield Foods, Inc.*, 332 F.Supp.2d 55, 2004 U.S. Dist. LEXIS 16524 (2004).

To determine whether parent corporation controls its subsidiaries, and thus is subject to personal jurisdiction in district in antitrust suit based on subsidiaries' activities, court looks to totality of relationship between parent and its subsidiaries, including whether parent has capacity to influence subsidiaries' major business decisions, whether parent and subsidiaries have same officers and directors, whether parent and subsidiaries maintain separate books and accounts, whether integrated sales system exists between parent and subsidiaries, and whether parent and subsidiaries present common marketing image. *United States v. Smithfield Foods, Inc.*, 332 F.Supp.2d 55, 2004 U.S. Dist. LEXIS 16524 (2004).

When parent and its subsidiary are joined as defendants in antitrust action, court may exercise jurisdiction over parent based on activities of subsidiary within district if relationship between parent and subsidiary is such that subsidiary may be considered agent or alter ego of parent. *United States v. Smithfield Foods, Inc.*, 332 F.Supp.2d 55, 2004 U.S. Dist. LEXIS 16524 (2004).

Federal district court sitting in District of Columbia did not have personal jurisdiction over nonresident natural gas pipeline operator, under District of Columbia long-arm statute conferring jurisdiction when business was transacted, based on activities of its marketing subsidiary in District; activities of subsidiary were ordinarily not attributable to parent for jurisdictional purposes, and parent was not alter ego of subsidiary, as required for exception to general non-attribution rule. *Atlantigas Corp. v. Nisource, Inc.*, 290 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 18484 (2003).

That wholly-owned subsidiary of Swedish national telephone company laid cable in Wash-

ington, D.C., was insufficient to establish personal jurisdiction over telephone company in federal district court sitting in District of Columbia, in consultancy firm's action for damages, return of property, and cease and desist order arising from Swedish corporation's alleged takeover of consultancy firm's Swedish operations, under theory that subsidiary's commercial activity could be imputed to telephone company, inasmuch as telephone company's sworn affidavits established that there were no shared officers or directors between it and subsidiary, that financial records and account books were maintained separately, and that telephone company had no role in subsidiary's day-to-day operations or corporate governance, so as to allow piercing of the corporate veil; mere corporate relationship between telephone company and subsidiary, without more, was insufficient to connect telephone company to District of Columbia. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

Jurisdictional facts alleged in complaint alleging antitrust conspiracy involving manufacture and sale of sodium monochloroacetate (SMCA) and monochloroacetic acid (MCAA) were not sufficiently specific to establish specific jurisdiction over French corporation under District of Columbia long-arm statute; allegations were that subsidiaries engaged in MCAA antitrust conspiracy involving MCAA sold in United States, that one or more of conspirators resided, transacted business, were found, or had agents in district, and that substantial part of events giving rise to plaintiff's claims occurred and substantial portion of affected interstate trade and commerce had been carried out in District of Columbia. *Diamond Chem. Co. v. Atofina Chems., Inc.*, 268 F.Supp.2d 1, 2003 U.S. Dist. LEXIS 10549 (2003).

Ultimately, in determining whether personal jurisdiction exists over parent corporation in forum court when it exists over subsidiary corporation, the question is whether the parent corporation so dominated the subsidiary corporation as to negate its separate personality, making the exercise of jurisdiction over the absent parent fair and equitable. *Johnson-Tanner v. First Cash Fin. Servs.*, 239 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 335 (2003).

To determine whether a parent corporation is a separate corporate entity distinct from its subsidiary, over which district court has personal jurisdiction, or merely the alter ego of the subsidiary, for purposes of deciding existence of personal jurisdiction over parent corporation, the district court must evaluate: (1) whether there is such a unity of interest and ownership that the separate corporate personalities of parent corporation and subsidiary effectively no longer exist, and (2) whether an inequitable

result would follow if the district court treats subsidiary's allegedly wrongful acts as those of subsidiary alone and not also those of parent corporation. *Johnson-Tanner v. First Cash Fin. Servs.*, 239 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 335 (2003).

Unity of interest between parent corporation and subsidiary is established, for purposes of determining if subsidiary is alter ego of parent corporation, in analyzing existence of personal jurisdiction over parent corporation when it exists over subsidiary, if parent corporation had active and substantial control over subsidiary at the time of the alleged wrongful acts that form basis of lawsuit, but this control does not have to amount to actual day-to-day control or supervision. *Johnson-Tanner v. First Cash Fin. Servs.*, 239 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 335 (2003).

Existence of unity of interest and ownership blurred any distinction between employer's parent corporation and subsidiary, so that District Court could exercise personal jurisdiction over parent corporation, in employee's racial discrimination action against both parent corporation and subsidiary, when District Court had personal jurisdiction over subsidiary; parent and subsidiary shared at least three key common officers and directors, none of the shared officers and directors maintained separate phone or facsimile line for their dual roles, one executive employee was transferred from parent to subsidiary, employee of parent made hiring and firing decisions for subsidiary, parent headquarters maintained nearly all records for subsidiary employee, and parent and subsidiary maintained joint payroll and accounting systems. *Johnson-Tanner v. First Cash Fin. Servs.*, 239 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 335 (2003).

Employees sufficiently alleged that corporate parent of subsidiary that employed them transacted business in forum and that their race discrimination claims were related to acts forming basis for personal jurisdiction, as required for court to exercise jurisdiction under District of Columbia law. D.C. Code 1981, § 13-423(a)(1). *Richard v. Bell Atl. Corp.*, 946 F. Supp. 54, 1996 U.S. Dist. LEXIS 17637 (1996).

Employees sufficiently alleged claims against parent company within district court's jurisdiction, under District of Columbia statute for causing tortious injury in district by act or omission in district, by alleging that parent's district based subsidiary's employment practices within district led to race discrimination in placement, training, and promotion of employees working in district. D.C. Code 1981, § 13-423(a)(3). *Richard v. Bell Atl. Corp.*, 946 F. Supp. 54, 1996 U.S. Dist. LEXIS 17637 (1996).

United States District Court for the District of Columbia had jurisdiction under District of Columbia long-arm statute over New York pres-

ident of parent corporation and its wholly owned subsidiary in employment discrimination action brought by former employee; president could have reasonably anticipated being hauled into court in District of Columbia from his ownership and supervisory role in District of Columbia-based subsidiary, president spoke with subsidiary's manager twice a month and visited subsidiary's office twice a year, and president apparently participated in employment decision which gave rise to action against him and the corporations. D.C. Code 1981, § 13-423(a)(1). *Katradis v. Dav-El of Washington*, 702 F. Supp. 1, 1987 U.S. Dist. LEXIS 14692 (1987).

Japanese automobile manufacturer's extensive involvement with and control over its import subsidiary and various regional dealerships around District of Columbia area which marketed manufacturer's automobiles in the District gave rise to sufficient contacts with the District related to joint venture, challenged herein under antitrust laws, so as to permit exercise of jurisdiction under District of Columbia long-arm statute. Clayton Act, § 12, 15 U.S.C. § 22; D.C. Code 1981, § 13-423(a)(1). *Chrysler Corp. v. General Motors Corp.*, 589 F. Supp. 1182, 1984 U.S. Dist. LEXIS 16318 (1984).

Significant control by parent corporation of corporate operator of movie theater in Virginia where injuries giving rise to negligence action allegedly occurred was insufficient, by itself, to pierce the corporate veil for the purpose of establishing personal jurisdiction of District of Columbia (D.C.) court over nonresident operator under long-arm statute; there was no evidence of fraud in the creation of layered corporate structure, and there was no injustice in respecting that structure, since plaintiff could have either sued parent corporation in District of Columbia or sued operator in Virginia. *Jackson v. Loews Wash. Cinemas, Inc.*, 944 A.2d 1088, 2008 D.C. App. LEXIS 111 (2008).

Significant sharing of operations in the legal, advertising, and maintenance/repair departments of parent corporation and corporate operator of movie theater outside District of Columbia where injuries giving rise to negligence action allegedly occurred established unity of ownership and interest between the corporations, as one requirement for piercing the corporate veil in order to establish long-arm jurisdiction over nonresident operator. *Jackson v. Loews Wash. Cinemas, Inc.*, 944 A.2d 1088, 2008 D.C. App. LEXIS 111 (2008).

Mexican elevator repair company was not the alter ego of American elevator company that did business in the District, and thus, trial court was not authorized to pierce the corporate veil in order to assert personal jurisdiction over Mexican company, even though the Mexican company was formerly owned by American

company and pursuant to a stock purchase agreement the Mexican company continued to use American company's name and logo, supplied American company with elevator parts, and continued to use consultants from American company, where the two companies did not share any employees, managers, officers, office equipment, or office space, the two companies had separate bank accounts, and the Mexican company held its own corporate meetings and paid its own taxes. *Gonzalez v. Internacional de Elevadores, S.A.*, 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

Trial court confronted by both a motion to dismiss for lack of personal jurisdiction and a motion for summary judgment was required to determine whether there was personal jurisdiction over corporate defendant before granting summary judgment to defendant on the merits in action alleging that lead paint exclusion in a general liability insurance policy issued by a wholly-owned subsidiary of defendant was void as against public policy; public policy issue, which was apparently one of first impression, should not have been addressed first where there was doubt about the court's jurisdiction to decide the matter, defendant did not clearly waive jurisdictional argument, and there was a question as to whether plaintiff sued the proper party in suing defendant, rather than defendant's subsidiary. *Hawkins v. W. R. Berkley Corp.*, 889 A.2d 290, 2005 D.C. App. LEXIS 654 (2005).

Defamation.

— Acts within District, defamation.

Fact that author's article allegedly defamed plaintiff in District of Columbia by circulating magazine in District was not sufficient basis for federal court to exercise jurisdiction over author in libel action under District's long-arm statute which provided jurisdiction over persons who cause tortious injury in District by act or omission where libelous article was written and delivered to publisher outside District. D.C. Code 1981, § 13-423(a)(3). *McFarlane v. Esquire Magazine*, 74 F.3d 1296, 1996 U.S. App. LEXIS 1151 (C.A.D.C. 1996), writ of certiorari denied by 519 U.S. 809, 117 S. Ct. 53, 136 L. Ed. 2d 16, 1996 U.S. LEXIS 4657, 65 U.S.L.W. 3256 (1996).

Allegation that defendant sent defamatory letter into District of Columbia, even if true, would not satisfy requirement of causing tortious injury in District of Columbia necessary for District of Columbia long-arm statute to apply. D.C. Code 1981, § 13-423(a)(3). *Edmond v. United States Postal Serv. Gen. Counsel*, 949 F.2d 415, 1991 U.S. App. LEXIS 27367 (C.A.D.C. 1991), remanded by 79 F.3d 372, 1996 U.S. App. LEXIS 4726 (4th Cir. Md. 1996).

Sending of allegedly defamatory letter from New York to Belize was not act in District of Columbia for purpose of District of Columbia long-arm statute. D.C. Code 1981, § 13-423(a)(3, 4). *Crane v. Carr*, 814 F.2d 758, 1987 U.S. App. LEXIS 4037 (C.A.D.C. 1987).

Fact that newspapers which contained allegedly libelous article were mailed into District of Columbia and caused injury in District was not sufficient basis for federal court to exercise jurisdiction over newspaper publisher in libel action under District's long-arm statute which provided jurisdiction over person who causes tortious injury in District by act or omission where libelous article was printed, and newspapers were mailed, outside the District. D.C. Code 1981, §§ 13-423, 13-423(a)(3). *Moncrief v. Lexington Herald-Leader Co.*, 807 F.2d 217, 1986 U.S. App. LEXIS 34784 (C.A.D.C. 1986).

Where none of individual defendants resided in the District of Columbia, personal jurisdiction could be invoked over them only pursuant to the District of Columbia's long-arm statute, and where defendants had disseminated allegedly defamatory letter only to narrow class of people in Maryland, mere fact that a letter ultimately found its way to publisher which published excerpts in the District of Columbia was too attenuated a contact to justify the District's exercise of in personam jurisdiction over the defendants. D.C. Code 1981, § 13-423(a), (a)(3); U.S. Const. Amends. 5, 14. *Reuber v. United States*, 750 F.2d 1039, 1984 U.S. App. LEXIS 16101 (C.A.D.C. 1984).

Allegedly defamatory telephone conversations between defendant in Massachusetts and New York and individuals within District of Columbia did not amount to tortious acts within District sufficient to give its federal district court jurisdiction over Massachusetts defendant under District's long-arm statute. D.C. Code 1981, §§ 13-423, 13-423(a)(3). *Tavoulareas v. Comnas*, 720 F.2d 192, 1983 U.S. App. LEXIS 15760 (C.A.D.C. 1983).

An "act or omission in the District of Columbia" which could give District federal court jurisdiction over nonresident defendant under long-arm statute was required to be uncoerced one, Massachusetts defendant's allegedly defamatory statements while testifying pursuant to subpoena before SEC investigators did not constitute act in District which could give federal district court there jurisdiction over defendant in subsequent defamation action. D.C. Code 1981, §§ 13-423, 13-423(a)(3). *Tavoulareas v. Comnas*, 720 F.2d 192, 1983 U.S. App. LEXIS 15760 (C.A.D.C. 1983).

Where newspaper reporter allegedly made defamatory statements in telephone calls from Wisconsin to the District of Columbia with respect to plaintiff, reporter had not acted within the District within meaning of its long-arm statute on theory that by making the

telephone call and by causing actual physical events in the District such as the ringing of bells and flashing of lights the reporter projected her presence into the District, and no personal jurisdiction could be asserted over reporter. Fed. Rules Civ. Proc. rule 12(b), 18 U.S.C.; D.C. Code §§ 11-101 et seq., 13-423(a)(3, 4). *Margoles v. Johns*, 483 F.2d 1212, 1973 U.S. App. LEXIS 9394 (C.A.D.C. 1973).

Fact that newspapers containing allegedly libelous article were mailed into the District of Columbia and caused injury in the District was not sufficient basis for federal District Court to exercise jurisdiction over newspaper publisher in libel action under provision of District of Columbia long arm statute allowing jurisdiction over person who causes tortious injury in the District by act or omission in the District, where libelous article was printed, and newspapers were mailed, outside the District. D.C. Code 1981, §§ 13-423, 13-423(a)(3). *Moncrief v. Lexington Herald-Leader Co.*, 631 F. Supp. 772, 1985 U.S. Dist. LEXIS 14758 (1985), affirmed by 807 F.2d 217, 257 U.S. App. D.C. 72, 1986 U.S. App. LEXIS 34784, 13 Media L. Rep. (BNA) 1762 (1986).

— Doing business, defamation.

Author's writing article for publication that was circulated throughout nation, including District of Columbia, did not constitute doing or soliciting business, or engaging in persistent course of conduct, within District, and sale of two articles by author to district-based publications over career in journalism did not amount to "regularly" doing business or to "persistent" course of conduct for purposes of District's long-arm statute which provided jurisdiction over person who causes tortious injury in District by act or omission outside District if accompanied by specified kind of additional contact, and thus libel plaintiff failed to show contacts between author and District sufficient for federal court to exercise jurisdiction over author. D.C. Code 1981, § 13-423(a)(4). *McFarlane v. Esquire Magazine*, 74 F.3d 1296, 1996 U.S. App. LEXIS 1151 (C.A.D.C. 1996), writ of certiorari denied by 519 U.S. 809, 117 S. Ct. 53, 136 L. Ed. 2d 16, 1996 U.S. LEXIS 4657, 65 U.S.L.W. 3256 (1996).

Under District of Columbia long-arm statute, federal district court had personal jurisdiction over Interpol where Interpol was alleged to have defamed plaintiff in District by transmitting notification that plaintiff was wanted international criminal to Department of Justice and where Interpol had engaged in persistent course of conduct within District by regularly sending information to and receiving information from Department. D.C. Code 1973, § 13-334(a). *Steinberg v. International Criminal Police Organization*, 672 F.2d 927, 1982 U.S. App. LEXIS 21827 (C.A.D.C. 1981).

Distributor which had its principal offices in city of New York, which received German-language magazines from West Germany and forwarded them by common carrier to another distributor in the District of Columbia, which had sales of \$26,000 in the District in the first ten months of the year, with such sales representing approximately one percent of its gross revenues for the ten-month period, had, on the basis of income derived from the District, reasonable connection with the District so that District could assert long-arm jurisdiction over the distributor with respect to allegedly libelous magazine article. D.C. Code § 13-423(a)(4). *Founding Church of Scientology v. Verlag*, 536 F.2d 429, 1976 U.S. App. LEXIS 8799 (C.A.D.C. 1976).

Milwaukee newspaper's maintenance of permanent offices in District of Columbia and its assignment of three reporters to the District did not render newspaper subject to jurisdiction of District of Columbia court in action for slander based on defamatory statements made by reporter in telephone calls from Wisconsin to the District on theory that newspaper engaged in a persistent course of conduct within the District. D.C. Code § 13-423(a)(3, 4). *Margoles v. Johns*, 483 F.2d 1212, 1973 U.S. App. LEXIS 9394 (C.A.D.C. 1973).

Internet gossip columnist, who wrote, published, and transmitted from computer in California column that allegedly defamed District of Columbia residents, engaged in persistent course of conduct in District sufficient to warrant exercise of personal jurisdiction under long-arm statute, in light of interactivity of web site, which particularly focused on District gossip, regular electronic distribution of column to District residents, solicitation and receipt of contributions from District residents, columnist's interview with television station in District, and columnist's contacts with District residents to collect gossip. D.C. Code 1981, § 13-423(a)(4). *Blumenthal v. Drudge*, 992 F. Supp. 44, 1998 U.S. Dist. LEXIS 5606 (1998).

Corporation's act of sending allegedly defamatory message from State of Washington to Virginia over private online subscriber service, which resulted in message being posted on service's electronic bulletin boards, did not amount to "transacting business" in District of Columbia such as would subject corporation to jurisdiction in District on defamation claim, notwithstanding that online service allegedly had 200,000 subscribers in District with potential access to posting; subject matter of message had nothing to do with District, sending of message was not an act purposefully or foreseeably aimed at District, there was no indication that plaintiffs suffered any injury in District that they could not have suffered in any state where someone may have read message, and corporation did not regularly do busi-

ness in District. D.C. Code 1981, § 13-423(a)(1, 4). *Mallinckrodt Med. v. Sonus Pharms.*, 989 F. Supp. 265, 1998 U.S. Dist. LEXIS 136 (1998).

In determining whether New York City magazine, being sued for libel, had sufficient minimum contacts with District of Columbia for purposes of District's long-arm statute, magazine's subscription sales and newsstand sales within District would be considered, even though magazine contended that only newsstand sales should be considered, because only sales transactions engaged in by magazine entirely within District were newsstand sales, subscription revenue being derived from acts and transactions performed by magazine outside District, where statute refers to revenue derived from "goods used or consumed. . . in the District of Columbia," not to revenue derived from acts engaged in entirely in District. D.C. Code § 13-423(a)(4). *Akbar v. New York Magazine Co.*, 490 F. Supp. 60, 1980 U.S. Dist. LEXIS 13104 (1980).

New York City magazine's average total annual sales in District of Columbia of \$32,897.04, which represented approximately .7 percent of total sales, constituted substantial revenue under meaning of applicable section of District's long-arm statute, and thus magazine, being sued for libel, did not lack minimum contacts with forum necessary to subject it to federal district court's jurisdiction pursuant to such statute. D.C. Code § 13-423(a)(4). *Akbar v. New York Magazine Co.*, 490 F. Supp. 60, 1980 U.S. Dist. LEXIS 13104 (1980).

— In general.

District of Columbia resident suffered foreseeable injury in District from allegedly defamatory letter, for purposes of determining whether District of Columbia court had personal jurisdiction over author of letter, even though letter had not been published in District. D.C. Code 1981, § 13-423(a)(4). *Crane v. New York Zoological Soc.*, 894 F.2d 454, 1990 U.S. App. LEXIS 1145 (C.A.D.C. 1990).

Where it was by no means certain that it was one of the individual defendants who leaked defamatory letter into the District of Columbia, District of Columbia did not have personal jurisdiction over the individual defendants under the District's long-arm statute. D.C. Code 1981, § 13-423(a), (a)(3, 4). *Reuber v. United States*, 750 F.2d 1039, 1984 U.S. App. LEXIS 16101 (C.A.D.C. 1984).

Publisher of allegedly libelous articles in California newspaper was not subject to personal jurisdiction under "transacting business" provision of District of Columbia long-arm statute based on fact that it maintained bureau in District; while plaintiff claimed that bureau was engaged not only in business of news gathering, but also that it contributed columns that were syndicated to 1,500 publications by

publisher, she failed to show link between either of those activities and allegedly libelous articles in California paper, which publisher established were entirely researched and written without input by members of District bureau. D.C. Code 1981, § 13-423(a)(1). *Lohrenz v. Donnelly*, 958 F. Supp. 17, 1997 U.S. Dist. LEXIS 5787 (1997).

Where plaintiffs, who brought action against a New York City magazine for libel because of article naming them as members of secret police of Shah of Iran, were foreign diplomats temporarily residing in Washington metropolitan area and had their principal place of business in District of Columbia, they were in such community, and proof of "injury" to their professional standing caused by defamation constituted injury "in the District of Columbia" for purposes of District's long-arm statute. D.C. Code § 13-423. *Akbar v. New York Magazine Co.*, 490 F. Supp. 60, 1980 U.S. Dist. LEXIS 13104 (1980).

Where, in action by former diplomats assigned to Iranian Embassy in District of Columbia, against New York City magazine, for libel because of article naming them as members of secret police of Shah of Iran, court found one of two elements necessary for jurisdiction under certain section of District's long-arm statute, injury in District, if injury occurred, and found two of three elements necessary for jurisdiction under another section, injury in District, if injury occurred, and substantial revenue derived from goods used or consumed in District, it was unnecessary to determine locus of act causing injury for purposes of asserting personal jurisdiction. D.C. Code § 13-423(a)(3, 4). *Akbar v. New York Magazine Co.*, 490 F. Supp. 60, 1980 U.S. Dist. LEXIS 13104 (1980).

Discovery.

Real estate broker demonstrated that it could, through discovery, supplement its allegations that District of Columbia courts had jurisdiction over its action alleging that securities broker failed to honor contract to provide front-page link to real estate broker's Internet website, and real estate broker thus would have been entitled to discovery, absent insufficient service of process, where securities broker's customers entered into binding contracts over Internet, securities broker offered customers alternative of conducting transactions by mail or telephone, and securities broker permitted transactions 24 hours a day. *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 2002 U.S. App. LEXIS 11674 (C.A.D.C. 2002).

For purposes of District of Columbia long-arm statute, even if due process requires non-resident to have known about and assented to alleged injury causing act, plaintiff need not specifically allege knowledge to obtain discov-

ery because nonresident's participation in tortious conspiracy entails significant probability that he did know and assent. D.C. Code 1981, § 13-423(a)(3). *Edmond v. United States Postal Serv. Gen. Counsel*, 949 F.2d 415, 1991 U.S. App. LEXIS 27367 (C.A.D.C. 1991), remanded by 79 F.3d 372, 1996 U.S. App. LEXIS 4726 (4th Cir. Md. 1996).

District of Columbia victim of alleged defamation, who sought to obtain personal jurisdiction over New York letter publisher under long-arm statute provision for act outside District that causes tortious injury in District, was entitled to discovery to inquire into publisher's affiliations with District, to seek more detailed delineation of publisher's activities in District, to inquire how copies of allegedly defamatory letter to Belize arrived at various places in District, and to determine what responsibility publisher had for appearance of copies in District. D.C. Code 1981, § 13-423(a)(4); U.S. Const. Amends. 5, 14. *Crane v. Carr*, 814 F.2d 758, 1987 U.S. App. LEXIS 4037 (C.A.D.C. 1987).

Physician's action against foreign corporation was properly dismissed for lack of personal jurisdiction, even though physician insisted that requisite connection of corporation's division and subsidiaries in forum would have been revealed with sufficient clarity had corporation adequately answered interrogatories, where physician failed for nearly three years before moving to compel further discovery responses. D.C. Code 1981, §§ 13-334(a), 13-423(a)(4). *Reuber v. United States*, 787 F.2d 599, 1986 U.S. App. LEXIS 24021 (C.A.D.C. 1986).

District court did not abuse its discretion in denying plaintiff additional discovery for purpose of establishing personal jurisdiction, where plaintiff had ample opportunity to take discovery and pleadings contained no allegations of specific facts that could establish requisite contacts. D.C. Code 1981, § 13-423. *Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 1983 U.S. App. LEXIS 14944 (C.A.D.C. 1983).

District of Columbia resident, who alleged that he suffered serious ailments from the anthrax inoculations he received while in the military, was not entitled to jurisdictional discovery in his products liability action against Michigan anthrax vaccine manufacturer; it was implausible that any additional discovery would be sufficient to establish general jurisdiction in the District of Columbia, and resident did not allege how any of manufacturer's contacts with District related to or arose out of his claim, and therefore, specific jurisdiction could not be supplemented by discovery. *Savage v. Bioport, Inc.*, 460 F.Supp.2d 55, 2006 U.S. Dist. LEXIS 78144 (2006).

Discovery was not warranted as to whether District Court had personal jurisdiction, pursuant to District of Columbia long-arm statute,

over United States congregation in action by Palestinian residents of West Bank, where initial jurisdictional allegations were patently inadequate, and residents' arguments regarding congregation's website as basis for personal jurisdiction did not even surface in complaint. *Doe I v. State of Israel*, 400 F.Supp.2d 86, 2005 U.S. Dist. LEXIS 27471 (2005).

Personal injury plaintiff would not be granted additional discovery time with respect to issue of whether federal district court in the District of Columbia had personal jurisdiction over defendant, which had manufactured candle that allegedly exploded and caused injury, where plaintiff merely asserted that he sought to establish manufacturer's business contacts within the District of Columbia, and did not even suggest that he believed that defendant had any business contacts with District of Columbia other than the attenuated link through a nationwide distributor, which court had determined was insufficient to establish jurisdiction. *Formica v. Cascade Candle Co.*, 125 F.Supp.2d 552, 2001 U.S. Dist. LEXIS 116 (2001).

United States would not be granted opportunity to conduct jurisdictional discovery following grant of British tobacco company's motion to dismiss for lack of personal jurisdiction action in which United States sought to recover health care expenses incurred in treating patients for smoking-related illnesses, and to disgorge profits under Racketeer Influenced and Corrupt Organizations Act (RICO), where exceptionally voluminous exhibits previously submitted indicated that United States had already had ample opportunity to conduct discovery, and United States made no showing of what results it thought additional discovery would produce. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

Plaintiff, in action challenging issuance of mineral lease by Department of Interior, was not entitled to additional time in which to conduct discovery before trial court ruled upon question of its personal jurisdiction over private defendants where complaint did not allege facts that would allow court to conclude that there was personal jurisdiction over most of private defendants, complaint would not withstand motions to dismiss, affidavits filed by most of private defendants indicated that any contacts with District of Columbia could not provide basis for jurisdiction under District of Columbia's long-arm statute, and plaintiff had already had adequate opportunity to discover information. D.C. Code 1981, § 13-423(a)(4), (b); Mineral Lands Leasing Act, § 1 et seq., 30 U.S.C. § 181 et seq. *Naartex Consulting Corp. v. Watt*, 542 F. Supp. 1196, 1982 U.S. Dist.

LEXIS 9566 (1982), affirmed by 722 F.2d 779, 232 U.S. App. D.C. 293, 1983 U.S. App. LEXIS 14944, 38 Fed. R. Serv. 2d (Callaghan) 332, 82 Oil & Gas Rep. 161 (1983).

Dismissal of actions generally.

In the absence of discovery, District Court for the District of Columbia could not determine that it did not have personal jurisdiction over defendants who were allegedly involved in illegal surveillance and intimidation activities directed against American citizens residing in West Germany even though four of the defendants resided overseas and were served by mail pursuant to the long-arm statute and one resided in Virginia and was personally served at his residence. D.C. Code §§ 13-422, 13-423. *Berlin Democratic Club v. Rumsfeld*, 410 F. Supp. 144, 1976 U.S. Dist. LEXIS 16081 (1976).

Unresolved factual questions concerning applicability of government contacts exception to personal jurisdiction under long-arm statute precluded dismissal of retired service member's claims against Texas non-profit corporation operating as non-commissioned officers association; questions existed as to whether corporation maintained an office in the District of Columbia, maintained an active presence in the District of Columbia representing veterans, was member's agent, or represented him before Department of Veterans Affairs. *Thomas v. DAV Ass'n*, 930 A.2d 997, 2007 D.C. App. LEXIS 549 (2007).

Trial court, in ruling upon defendant's motion to dismiss for lack of personal jurisdiction, acted in manner contrary to deeply rooted doctrine that constitutional issue is to be avoided if possible, when it assumed that jurisdiction's long arm statute was satisfied and proceeded to rule that allowing suit would offend traditional notions of fair play and substantial justice. D.C. Code 1981, § 13-423. *International Union of Elec., Salaried, Mach., & Furniture Workers v. Taylor*, 669 A.2d 699, 1995 D.C. App. LEXIS 262 (1995).

Due process, generally.

Even if District of Columbia long-arm statute permitted court in inmate's action against government officials in American Samoa, medical center, and its officers and employees to exercise personal jurisdiction over the American Samoa and medical center defendants in their individual capacities, holding defendants personally liable would not comport with the fundamental notions of fair play and substantial justice, and thus would violate defendants' due process rights, absent evidence that any of the American Samoa or medical center defendants purposefully directed any activities at residents of the District of Columbia or that any of the defendants had any contacts, ties, or relation to the District of Columbia other than through

plaintiff's lawsuit. *Majhor v. Kempthorne*, 518 F.Supp.2d 221, 2007 U.S. Dist. LEXIS 80113 (2007).

Personal jurisdiction over Israeli officials, pursuant to District of Columbia long-arm statute, in action by Palestinian residents of West Bank arising from development of settlements, would offend due process guarantees, given tenuous and fortuitous nature of connection between alleged contact and United States. *Doe I v. State of Israel*, 400 F.Supp.2d 86, 2005 U.S. Dist. LEXIS 27471 (2005).

The District of Columbia long-arm statute only goes as far as the Due Process Clause will permit. *Doe I v. State of Israel*, 400 F.Supp.2d 86, 2005 U.S. Dist. LEXIS 27471 (2005).

District of Columbia's long-arm provision allows for personal jurisdiction to the fullest extent permissible under the Due Process Clause. *Johnson-Tanner v. First Cash Fin. Servs.*, 239 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 335 (2003).

Requirements of due process are satisfied where the exercise of personal jurisdiction over a nonresident defendant does not offend traditional notions of fair play and substantial justice. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

Even when the literal terms of the District of Columbia's long-arm statute have been satisfied, plaintiff must also show that the exercise of personal jurisdiction is within the permissible bounds of the due process clause. U.S. Const.Amends. 5, 14; D.C. Code 1981, § 13-423(a). *Marshall v. Labor & Indus.*, 89 F.Supp.2d 4, 2000 U.S. Dist. LEXIS 6125 (2000).

District of Columbia long-arm statute will reach as far as the United States Constitution will allow; critical inquiry is whether the business transacted within the District can be reached jurisdictionally without offending the due process clause. U.S.C. Const.Amend. 5; D.C. Code 1981 § 13-423(a). *BCCI Holdings (Lux.), S.A. v. Khalil*, 20 F.Supp.2d 1, 1997 U.S. Dist. LEXIS 22986 (1997).

To establish personal jurisdiction over defendants under District of Columbia long-arm statute, plaintiff must demonstrate that exercising jurisdiction would not offend traditional notions of fair play and justice. D.C. Code 1981, § 13-423(a)(1). *Dickson v. United States*, 831 F. Supp. 893, 1993 U.S. Dist. LEXIS 12544 (1993).

Exercising personal jurisdiction over partner in accounting firm under the District of Columbia's long-arm statute did not violate traditional notions of substantial justice and fair play, in action based on alleged misrepresentations in financial statements prepared in Maryland by accounting firm and used in loan trans-

action in the District of Columbia; accounting firm maintained office in the District of Columbia, conducted business in the District of Columbia, and conducted business personally or through an agent with plaintiff in the District of Columbia. Fed.R.Civ.Proc. Rule 4(e), 18 U.S.C.; D.C. Code 1981, § 13-423(a)(4); U.S. Const.Amends. 5, 14. *National Bank of Washington v. Mallery*, 669 F. Supp. 22, 1987 U.S. Dist. LEXIS 8017 (1987).

Where there is actual knowledge or alternative basis for imputing knowledge that product will be used in forum, foreign manufacturer is susceptible to in personam jurisdiction. D.C. Code §§ 13-423, 13-423(a) (4), 13-431. *Liberty Mut. Ins. Co. v. American Pecco Corp.*, 334 F. Supp. 522, 1971 U.S. Dist. LEXIS 10584 (1971).

Where overseas corporation knew that it was selling its cranes to American distributor who did business in District of Columbia, constitutional requirement of "minimum contacts" for in personam jurisdiction was satisfied. D.C. Code §§ 13-423, 13-423(a)(4), 13-431. *Liberty Mut. Ins. Co. v. American Pecco Corp.*, 334 F. Supp. 522, 1971 U.S. Dist. LEXIS 10584 (1971).

"Transacting any business" provision of District of Columbia long-arm statute permits the exercise of personal jurisdiction over nonresident defendants to the extent permitted by the Due Process Clause of the Federal Constitution, and, accordingly, exercise of personal jurisdiction must satisfy the "minimum contacts" due process requirement in addition to statutory requirement that the claim for relief arise from the act or acts conferring jurisdiction. *Jackson v. Loews Wash. Cinemas, Inc.*, 944 A.2d 1088, 2008 D.C. App. LEXIS 111 (2008).

A court may assert personal jurisdiction over a nonresident defendant where service of process is authorized by statute and where the service of process so authorized is consistent with due process. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

A critical inquiry in an analysis of minimum contacts and personal jurisdiction under the due process clause is whether the defendant has purposefully directed its activities at residents of the forum. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

The minimum contacts analysis does not constitute a mechanical test in which courts apply talismanic jurisdictional formulas to determine whether the Superior Court may properly exercise personal jurisdiction over any given defendant consistent with the due process clause. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

The due process standard for personal jurisdiction is not satisfied through the mere likelihood that a product will find its way into the

forum state without any other relevant contacts between the defendant and the forum. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

Law firm which acted as client's agent in proceedings before the United States Patent Office could not prevent district court from exercising long-arm jurisdiction, in lawsuit arising from firm's alleged negligent failure to disclose prior art; permitting litigation in District of Columbia did not threaten any rights of plaintiff to petition for redress of grievances or otherwise to engage in First Amendment activity. U.S. Const. Amend. 1; D.C. Code 1981, § 13-423. *Lex Tex, Ltd. v. Skillman*, 579 A.2d 244, 1990 D.C. App. LEXIS 207 (1990).

Establishing jurisdiction, generally.

Test for determining whether District of Columbia court would have personal jurisdiction over securities broker, based on broker's conduct of electronic transactions within District through use of Internet website, would be the traditional test of asking whether broker's contacts with District were continuous and systematic. *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 2002 U.S. App. LEXIS 11674 (C.A.D.C. 2002).

If securities broker's contacts with District of Columbia, consisting entirely of electronic transactions through Internet website, were continuous and systematic, they provided basis for personal jurisdiction of District courts over real estate broker's action alleging that securities broker failed to honor contract to provide front-page link to real estate broker's website. *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 2002 U.S. App. LEXIS 11674 (C.A.D.C. 2002).

It would first be determined whether "long-arm" statute permitted exercise of jurisdiction over defendants and, if so, court would inquire whether exercise of jurisdiction over defendants comported with constitutional due process requirements. D.C. Code § 13-423; U.S. Const. Amendments. 5, 14. *Gatewood v. Fiat, S. p. A.*, 617 F.2d 820, 1980 U.S. App. LEXIS 21116 (C.A.D.C. 1980).

Lenders were not resident corporations for purposes of District of Columbia statute providing for personal jurisdiction based upon an enduring relationship, where they were citizens of Delaware and/or New Jersey, and at no time were they domiciled in or organized under the laws of the District of Columbia, nor did they maintain their principal place of business in the District of Columbia. *Rossmann v. Chase Home Fin. LLC*, 772 F.Supp.2d 169, 2011 U.S. Dist. LEXIS 31290 (2011), appeal dismissed by 2012 U.S. App. LEXIS 9641 (D.C. Cir. May 11, 2012).

Nonresident lenders were not subject to personal jurisdiction in borrower's action alleging

that they misapplied his property tax payments, thereby causing foreclosure of his property, under District of Columbia's long-arm statute, where the case arose out of alleged conduct of three Delaware and New Jersey entities regarding property in Virginia, no tortious conduct was alleged to have occurred in the District of Columbia, and borrower did not allege that he suffered any injury in the District of Columbia. *Rossmann v. Chase Home Fin. LLC*, 772 F.Supp.2d 169, 2011 U.S. Dist. LEXIS 31290 (2011), appeal dismissed by 2012 U.S. App. LEXIS 9641 (D.C. Cir. May 11, 2012).

To determine whether there is a sufficient connection between a defendant and the District of Columbia for exercise of personal jurisdiction, the determination is made: (1) whether there is an applicable long-arm statute that would authorize service on the defendant, and then (2) whether the application of such a statute would comply with the demands of due process. *Buesgens v. Brown*, 567 F.Supp.2d 26, 2008 U.S. Dist. LEXIS 44975 (2008).

Court engages in a two-part inquiry to determine whether it may exercise personal jurisdiction over non-resident defendants: (1) the Court determines whether jurisdiction may be exercised under the District of Columbia's long-arm statute; and (2) the Court determines whether the exercise of personal jurisdiction satisfies due process requirements. *Banks v. Lappin*, 539 F.Supp.2d 228, 2008 U.S. Dist. LEXIS 22532 (2008).

Specific jurisdiction requires a lesser showing than general jurisdiction that nevertheless must satisfy a two-step inquiry: (1) jurisdiction over the defendant must be authorized by the forum's long-arm statute, and (2) the exercise of that jurisdiction must satisfy the federal requirement of constitutional due process. *D'Onofrio v. SFX Sports Group, Inc.*, 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Personal jurisdiction was lacking over son of construction company principal, under District of Columbia long arm statute, in suit brought by representative claiming reputational injury arising from her representation of company in bidding for Egyptian government contracts, while bid rigging was going on without her knowledge; statement of allegedly fraudulent conduct or statements was excessively vague, as were allegations that conduct took place in District. *Elemery v. Holzmman*, 533 F.Supp.2d 116, 2008 U.S. Dist. LEXIS 8265 (2008), transfer denied by 533 F. Supp. 2d 144, 2008 U.S. Dist. LEXIS 8238 (D.D.C. 2008).

District Court for District of Columbia did not have personal jurisdiction over officials in American Samoa in inmate's action alleging refusal to provide off-island medical treatment violated his Eighth Amendment rights, absent evidence that any of the defendants other than

Secretary of Interior ever transacted business in the District of Columbia, contracted to supply services in the District of Columbia, contracted to insure or act as a surety for anyone or any agreement located, executed, or to be performed within the District of Columbia, held an interest in, used, or possessed real property in the District of Columbia, or had a marital or parent and child relationship in the District of Columbia, or such injuries occurred or manifested in the District of Columbia as required by the District of Columbia long-arm statute. *Majhor v. Kempthorne*, 518 F.Supp.2d 221, 2007 U.S. Dist. LEXIS 80113 (2007).

To establish personal jurisdiction under the District of Columbia subsection of the long-arm statute that governs personal jurisdiction based upon conduct of an agent, a plaintiff must demonstrate that: (1) the defendant transacted business in the District of Columbia; (2) the claim arose from the business transacted in the District; (3) the defendant had minimum contacts with the District; and (4) the court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. *FC Inv. Group LC v. IFX Mkts., Ltd.*, 479 F.Supp.2d 30, 2007 U.S. Dist. LEXIS 7919 (2007), affirmed by 529 F.3d 1087, 381 U.S. App. D.C. 383, 2008 U.S. App. LEXIS 13312 (2008).

On motion to dismiss for lack of personal jurisdiction, plaintiff bears burden of establishing factual basis for court's exercise of personal jurisdiction over defendant; plaintiff must allege specific acts connecting defendant with forum. *Ulico Cas. Co. v. Fleet Nat'l Bank*, 257 F.Supp.2d 142, 2003 U.S. Dist. LEXIS 5757 (2003).

In determining whether factual basis for personal jurisdiction exists, court should resolve factual discrepancies appearing in record in favor of plaintiff. *Ulico Cas. Co. v. Fleet Nat'l Bank*, 257 F.Supp.2d 142, 2003 U.S. Dist. LEXIS 5757 (2003).

Court, ruling on motion to dismiss for lack of personal jurisdiction, need not treat all of plaintiff's factual allegations as true; rather, court may receive and weigh affidavits and any other relevant matter to assist it in determining jurisdictional facts. *Ulico Cas. Co. v. Fleet Nat'l Bank*, 257 F.Supp.2d 142, 2003 U.S. Dist. LEXIS 5757 (2003).

The District of Columbia's long-arm statute requires a significant connection between the claim and alleged contact with the forum. *Gowens v. DynCorp*, 132 F.Supp.2d 38, 2001 U.S. Dist. LEXIS 2557 (2001).

District of Columbia's long-arm statute requires plaintiff to establish prima facie showing of personal jurisdictional facts over each defendant before federal court may exercise personal jurisdiction; plaintiff must allege specific facts connecting each defendant with forum and can-

not rest on bare allegations or conclusory statements. D.C. Code 1981, § 13-423(a)(1). *Schwartz v. CDI Japan*, 938 F. Supp. 1, 1996 U.S. Dist. LEXIS 8866 (1996).

Court must resolve personal jurisdiction issues under District of Columbia long-arm statute on case-by-case basis, noting in each particular activities relied upon by resident plaintiff as providing supposed basis for jurisdiction. D.C. Code 1981, § 13-423. *Cellutech, Inc. v. Centennial Cellular Corp.*, 871 F. Supp. 46, 1994 U.S. Dist. LEXIS 19588 (1994).

Under District of Columbia long-arm statute, plaintiff has burden of establishing that personal jurisdiction exists by demonstrating factual basis for exercise of such jurisdiction over defendant; in attempting to satisfy that burden, plaintiff may not rest on bare allegations or conclusory statements alone and must make at least prima facie showing in order to avoid dismissal for want of jurisdiction. D.C. Code 1981, § 13-423. *Novak-Canzeri v. Saud*, 864 F.Supp. 203, 1994 U.S. Dist. LEXIS 19432 (1994).

While District of Columbia long-arm statute is interpreted broadly, plaintiff must allege some specific facts evidencing purposeful activity by defendants in District and by which they invoke benefits and protections of its laws. D.C. Code 1981, § 13-423. *Novak-Canzeri v. Saud*, 864 F.Supp. 203, 1994 U.S. Dist. LEXIS 19432 (1994).

Since District of Columbia's long-arm statute has been held to extend as far as due process clause allows, personal jurisdiction exists when defendant has purposefully established minimum contacts with forum state and when exercise of jurisdiction comports with traditional notions of fair play and substantial justice. U.S. Const. Amend. 14; D.C. Code 1981, § 13-423(a). *Wiggins v. Equifax Inc.*, 853 F. Supp. 500, 1994 U.S. Dist. LEXIS 7061 (1994).

In determining whether it could exercise personal jurisdiction over foreign defendants in products liability action, district court for District of Columbia was required first to determine whether District of Columbia long-arm statute permitted exercise of jurisdiction over those defendants, and then was required to inquire whether exercise of jurisdiction over those defendants would comport with constitutional due process requirements. D.C. Code 1981, §§ 13-423, 13-423(a)(1, 4); U.S.C. Const. Amends. 5, 14. *McDaniel v. Armstrong World Industries*, 603 F. Supp. 1337, 1985 U.S. Dist. LEXIS 21753 (1985).

A determination as to whether personal jurisdiction may be asserted over a defendant under a long-arm statute involves two issues: (1) whether terms of the statute are met; and (2) whether, assuming conditions of statute itself are met, the would-be defendant had sufficient contacts with jurisdiction of plain-

tiff's forum to make assertion of jurisdiction constitutionally permissible. D.C. Code § 13-423; 18 U.S.C. § 1332. *Aiken v. Lustine Chevrolet, Inc.*, 392 F. Supp. 883, 1975 U.S. Dist. LEXIS 13158 (1975).

Where defendant Maine railroad had not engaged in any conduct enumerated under the District of Columbia "long arm" statute, the United States District Court in the District of Columbia did not have personal jurisdiction over the defendant Maine railroad and the court could not, sitting as a local court of the District of Columbia, entertain plaintiff Maine railroad's action to enforce arbitration award. D.C. Code §§ 11-501, 13-423. *Bangor & A. R. Co. v. Maine C. R. Co.*, 359 F. Supp. 261, 1973 U.S. Dist. LEXIS 13679 (1973).

District of Columbia's long-arm statute permits exercise of personal jurisdiction to full extent permissible under due process clause, and, thus, due process and long-arm standards merge so that court need only engage in single inquiry. U.S. Const. Amends. 5, 14; D.C. Code 1981, § 13-423. *Kline v. Zueblin* (In re American Export Group Int'l Servs.), 167 B.R. 311, 1994 Bankr. LEXIS 692 (1994).

There are no mechanical tests or talismanic formulas for determination of personal jurisdiction under District of Columbia long-arm statute, and facts of each case must be weighed against notions of fairness, reasonableness, and substantial justice. U.S. Const. Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

Fact that plaintiff is not a resident of forum state does not defeat in personam jurisdiction over nonresident defendant if defendant has the necessary minimum contacts. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

Weight of contacts varies greatly with circumstances of each case in determining existence of in personam jurisdiction over nonresident defendant. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

Whether a court may constitutionally assert in personam jurisdiction over nonresident defendant depends upon relationship among defendant, the forum, and the litigation. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

Before court may properly assert personal jurisdiction over nonresident defendant, service of process over nonresident must be authorized by statute and be within confines of due process clause of United States Constitution. U.S. Const. Amend. 14; D.C. Code § 13-423. *Cohane v. Arpeja-California, Inc.*, 385 A.2d 153, 1978 D.C. App. LEXIS 448 (1978), writ of certiorari denied by 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651, 1978 U.S. LEXIS 3936 (1978).

Estoppel.

Representative of construction company, and

its principal, was judicially estopped from claiming that loss of fee, sustained when principal's son tortiously interfered with prospective contract calling for representative to be company's exclusive case manager in qui tam action, was injury occurring in District of Columbia as required for jurisdiction under District's long arm statute; representative had earlier claimed that injury occurred in California, in similar action. *Elemery v. Holzmahn*, 533 F.Supp.2d 116, 2008 U.S. Dist. LEXIS 8265 (2008), transfer denied by 533 F. Supp. 2d 144, 2008 U.S. Dist. LEXIS 8238 (D.D.C. 2008).

Exceptions.

— Government contacts, exceptions.

Fact that Commonwealth of Virginia had contracts with the District of Columbia regarding D.C. inmates housed there, made reports to the District concerning those inmates, and received money from the District for keeping the inmates did not allow D.C. court to exercise, under transacting business provision of D.C. long-arm statute, personal jurisdiction over Virginia officials in their individual capacities in suit by D.C. inmate transferred to Virginia prison and then back again. *Abdus-Shahid M.S. Ali v. District of Columbia*, 278 F.3d 1, 2002 U.S. App. LEXIS 1225 (C.A.D.C. 2002).

District Court for the District of Columbia (D.C.) could not exercise specific personal jurisdiction over nonresident United States ferrosilicon producers in suit brought by Brazilian ferrosilicon producers based on the United States producers' alleged inducement of the unions representing their employees to join an allegedly fraudulent International Trade Commission (ITC) petition and their payment of the unions' legal fees, even if the government contacts doctrine did not prohibit exercising personal jurisdiction on the basis of participation in ITC proceedings, absent evidence that the alleged inducing or payment of fees occurred in the District. *Companhia Brasileira Carbureto de Calcio-CBCC v. Applied Industrial Materials Corp.*, 698 F.Supp.2d 109, 2010 U.S. Dist. LEXIS 29157 (2010).

Michigan anthrax vaccine manufacturer's contracts with Department of Defense, which presumably supplied the vaccine administered to District of Columbia resident while he was in the military, were insufficient to establish that federal court located in District of Columbia had jurisdiction over manufacturer in resident's products liability action; manufacturer's contract negotiations occurred outside the District, government contacts principle established that entry into District by nonresidents for purpose of contacting federal governmental agencies could not serve as basis for personal jurisdiction, and the contracts were not the alleged source of resident's injury. *Savage v.*

Bioport, Inc., 460 F.Supp.2d 55, 2006 U.S. Dist. LEXIS 78144 (2006).

Pursuant to government contacts exception, any meetings held by New York corporation in District of Columbia with federal officials and its signing of bi-lateral agreement on uranium could not be considered in determining whether corporation had sufficient contacts with District of Columbia to permit district court to exercise personal jurisdiction over it. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 116 F.Supp.2d 98, 2000 U.S. Dist. LEXIS 14624 (2000), affirmed in part and remanded in part by 296 F.3d 1154, 353 U.S. App. D.C. 147, 2002 U.S. App. LEXIS 15485, RICO Bus. Disp. Guide P10307 (2002).

The government contacts exception excludes from consideration in personal jurisdiction analysis defendant's contacts with federal instrumentalities. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 116 F.Supp.2d 98, 2000 U.S. Dist. LEXIS 14624 (2000), affirmed in part and remanded in part by 296 F.3d 1154, 353 U.S. App. D.C. 147, 2002 U.S. App. LEXIS 15485, RICO Bus. Disp. Guide P10307 (2002).

Government contacts exception to personal jurisdiction analysis did not apply to preclude consideration of New York corporation's alleged meetings at Republic of Kazakhstan embassy in determining whether corporation's contacts with District of Columbia supported exercise of personal jurisdiction over it. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 116 F.Supp.2d 98, 2000 U.S. Dist. LEXIS 14624 (2000), affirmed in part and remanded in part by 296 F.3d 1154, 353 U.S. App. D.C. 147, 2002 U.S. App. LEXIS 15485, RICO Bus. Disp. Guide P10307 (2002).

New York corporation's membership in a trade organization qualified as "government contact" that could not be considered, pursuant to government contacts exception, in determining whether personal jurisdiction could be exercised over corporation in District of Columbia. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 116 F.Supp.2d 98, 2000 U.S. Dist. LEXIS 14624 (2000), affirmed in part and remanded in part by 296 F.3d 1154, 353 U.S. App. D.C. 147, 2002 U.S. App. LEXIS 15485, RICO Bus. Disp. Guide P10307 (2002).

"Government contacts" exception to the District of Columbia long-arm statute does not extend to contacts with the federal government by an alien for the purposes of perpetrating a fraud. D.C. Code 1981 § 13-423(a). *BCCI Holdings (Lux.), S.A. v. Khalil*, 20 F.Supp.2d 1, 1997 U.S. Dist. LEXIS 22986 (1997).

Under "government contacts" exception to "transacting business" provision of District of Columbia's long-arm statute, person or company does not subject itself to jurisdiction of courts of District merely by filing application with government agency or by seeking redress

of grievances from Executive Branch or Congress. D.C. Code 1981, § 13-423(a)(1). *Mallinckrodt Med. v. Sonus Pharms.*, 989 F. Supp. 265, 1998 U.S. Dist. LEXIS 136 (1998).

Person or entity that has unsuccessfully petitioned Executive Branch, independent agency, or Congress and then seeks redress before federal or local courts in District of Columbia is not thereby "transacting business" for purposes of District's long-arm statute. D.C. Code 1981, § 13-423(a)(1). *Mallinckrodt Med. v. Sonus Pharms.*, 989 F. Supp. 265, 1998 U.S. Dist. LEXIS 136 (1998).

Fact that buyers of cellular phone system was required to make filings with Federal Communications Commission (FCC) and Securities and Exchange Commission (SEC) in District of Columbia, did not, standing alone, provide for jurisdiction over buyers in seller's lawsuit claiming breach of contract; under "government contacts exception" jurisdiction cannot be based within District only on contacts involving federal agency or Congress. D.C. Code 1981, § 13-423. *Cellutech, Inc. v. Centennial Cellular Corp.*, 871 F. Supp. 46, 1994 U.S. Dist. LEXIS 19588 (1994).

"Government contacts" doctrine exception to District of Columbia long-arm statute is outgrowth of First Amendment right to petition federal government and insulates those persons whose only contact with district is such petition; doctrine does not provide blanket exception for all governmental contacts and does not exempt federal employees who work in District from personal jurisdiction there. U.S.C. Const.Amend. 1; D.C. Code 1981, § 13-423(a)(1). *Rochon v. FBI*, 691 F. Supp. 1548, 1988 U.S. Dist. LEXIS 8760 (1988).

Although apartment complex owners' application to Department of Housing and Urban Development for mortgage coinsurance fell within preview of government contracts doctrine, and thus, could not be considered for jurisdictional purposes under District of Columbia long-arm statute, owners' remaining direct contacts with District supported exercise of jurisdiction. D.C. Code 1981, § 13-423(a)(1), (b); U.S.C. Const.Amend. 5. *Brown v. Artery Organization, Inc.*, 654 F. Supp. 1106, 1987 U.S. Dist. LEXIS 1321 (1987).

"Government contacts exception" to District of Columbia long-arm statute exempts contacts made in District with federal government from consideration as "business transactions" upon which long-arm jurisdiction may be based pursuant to subsection of statute permitting exercise of personal jurisdiction as to claim arising from transaction of business in District. D.C. Code 1981, § 13-423(a)(1), (b). *National Coal Asso. v. Clark*, 603 F. Supp. 668, 1984 U.S. Dist. LEXIS 21668 (1984).

Under District of Columbia long-arm statute, United States District Court for the District of

Columbia lacked personal jurisdiction over private defendants, including railroads, energy company, and mineral company, in action by coal producers' trade associations challenging decisions of Department of Interior to exchange federal property containing substantial coal reserves for property owned by private defendants, where private defendants' only contacts with District of Columbia were their maintenance of governmental affairs office and limited personal and written communications with Interior Department officials concerning challenged exchanges. D.C. Code 1981, § 13-423(a)(1). *National Coal Asso. v. Clark*, 603 F. Supp. 668, 1984 U.S. Dist. LEXIS 21668 (1984).

Filing by bank and its affiliates with Securities and Exchange Commission and mutual fund distributors application for membership in National Association of Securities Dealers in connection with plan to sponsor mutual fund fell within federal "government contacts principle" and therefore could not be used in any calculation of intrajurisdictional activity in determining their amenability to suit in District of Columbia. *Investment Co. Institute v. United States*, 550 F. Supp. 1213, 1982 U.S. Dist. LEXIS 17743 (1982).

New York corporation, involved in construction and operation of mills in foreign countries, was not within District of Columbia jurisdiction through government contacts taking advantage of services offered to prospective foreign investors by federal agencies, for purpose of action by plaintiffs in whose favor corporation negotiated federal loan. D.C. Code §§ 13-423(a)(1), 29-933i(c). *Siam Kraft Paper Co. v. Parsons & Whittemore, Inc.*, 400 F. Supp. 810, 1975 U.S. Dist. LEXIS 16002 (1975), affirmed by 521 F.2d 324, 172 U.S. App. D.C. 224 (1975).

Government contacts as such do not satisfy "doing business" criterion of District of Columbia jurisdiction statutes. D.C. Code §§ 13-423(a)(1), 29-933i(c). *Siam Kraft Paper Co. v. Parsons & Whittemore, Inc.*, 400 F. Supp. 810, 1975 U.S. Dist. LEXIS 16002 (1975), affirmed by 521 F.2d 324, 172 U.S. App. D.C. 224 (1975).

Unsupported allegations that a nonresident defendant has fraudulently induced unwarranted government action against the plaintiff will not be sufficient to invoke the fraud exception to the government contacts doctrine, pursuant to which entry into the District of Columbia by nonresidents for the purposes of contacting federal government agencies is not a basis for the assertion of in personam jurisdiction; rather, only those allegations that meet the requirements for pleading fraud under pleading rule for fraud claims or its federal counterpart will be sufficient to confer personal jurisdiction in the District. *Companhia Brasileira Carbureto De Calcio v. Applied Indus. Materials Corp.*, 35 A.3d 1127, 2012 D.C. App. LEXIS 9 (2012).

Law firm which acted as client's agent in proceedings before the United States Patent Office "transacted business" in District of Columbia, and could not invoke "government contacts" doctrine to prevent district court from exercising long-arm jurisdiction, in lawsuit arising from firm's alleged negligent failure to disclose prior art. U.S. Const. Amend. 1; D.C. Code 1981, § 13-423. *Lex Tex, Ltd. v. Skillman*, 579 A.2d 244, 1990 D.C. App. LEXIS 207 (1990).

Activities which are conducted in District of Columbia solely for purpose of gathering information from federal government are not "contacts" sufficient for assertion of in personam jurisdiction over nonresident defendant. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

In personam jurisdiction in District of Columbia could not be based on activities of nonresident corporation where activities carried on in corporation's District of Columbia office consisted entirely of monitoring congressional legislation. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

First Amendment right to petition government for redress of grievances without fear of threat of suit provides only principled basis for exempting foreign defendant from suit in District of Columbia, under "government contacts" principle, when foreign defendant's contacts are covered by long-arm statute and are sufficient to withstand traditional due process attack. U.S. Const. Amends. 1, 5, 14; D.C. Code § 13-423(a)(1). *Rose v. Silver*, 394 A.2d 1368, 1978 D.C. App. LEXIS 370 (1978).

Visits by personnel of nonresident defendants to District of Columbia to consult with officials of Environmental Protection Agency concerning possibility of a grant to defendants did not constitute transaction of business in District so as to subject it to in personam jurisdiction upon service under long-arm statute. D.C. Code § 13-423(a)(1). *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*, 355 A.2d 808, 1976 D.C. App. LEXIS 505 (1976).

Entry into District of Columbia by nonresident for purpose of contacting federal governmental agency is not a basis for assertion of in personam jurisdiction, notwithstanding enactment of long-arm statute. D.C. Code § 13-423(a)(1). *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*, 355 A.2d 808, 1976 D.C. App. LEXIS 505 (1976).

Rationale for "government contacts" exception to District of Columbia's long-arm statute has its source in unique character of District as seat of national government and in the correlative need for unfettered access to federal departments and agencies for the entire national citizenry. D.C. Code § 13-423(a)(1). *Environ-*

mental Research International, Inc. v. Lockwood Greene Engineers, Inc., 355 A.2d 808, 1976 D.C. App. LEXIS 505 (1976).

Rule that entrance into District of Columbia to deal with federal agency does not constitute transaction of business within long-arm statute did not apply to preclude jurisdiction over corporations which contracted with District corporation to deal with federal agency, with respect to District corporation's claim for compensation for these services. D.C. Code § 13-423(a)(1). *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*, 339 A.2d 390, 1975 D.C. App. LEXIS 439 (1975).

— In general.

Distributor which engaged in the distribution of magazines outside the area of their immediate circulation and which did not engage in news-gathering activities in the District of Columbia could not assert protection of news-gathering exception to assertion of long-arm jurisdiction over it. D.C. Code § 13-423(a)(4). *Founding Church of Scientology v. Verlag*, 536 F.2d 429, 1976 U.S. App. LEXIS 8799 (C.A.D.C. 1976).

Where a nonresident defendant who purposefully has directed its activities at forum residents seeks to defeat personal jurisdiction, it must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable. U.S.C. Const. Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

— News gathering, exceptions.

Newspaper publisher's maintenance of office within District of Columbia for purpose of gathering news fell within "news gathering exception" provision in District's long-arm statute which authorized exercise of personal jurisdiction over a defendant regularly engaged in business within District; therefore, federal court did not have jurisdiction over newspaper publisher in libel action despite whether article had "national importance" or not. D.C. Code 1981, § 13-423(a)(3). *Moncrief v. Lexington Herald-Leader Co.*, 807 F.2d 217, 1986 U.S. App. LEXIS 34784 (C.A.D.C. 1986).

News gathering exception in long-arm statute was not based upon First Amendment considerations, but rather was based upon interpretation of Congress' intent with respect to what type of "business" in District of Columbia will subject nonresident corporation to jurisdiction; receding from *Founding Church of Scientology v. Verlag*, 536 F.2d 429, (D.C. Cir.). D.C. Code 1981, § 13-423(a)(4). *Moncrief v. Lexington Herald-Leader Co.*, 807 F.2d 217, 1986 U.S. App. LEXIS 34784 (C.A.D.C. 1986).

Under the so-called "newsgathering exception," the collection of news in the District of Columbia for dissemination elsewhere does not constitute "business" or a "persistent course of conduct" for the purposes of assessing jurisdiction under subsection of the District of Columbia long-arm statute giving rise to personal jurisdiction for tortious injury caused by act or omission outside the District when the defendant engages in business or any other persistent course of conduct in the District. *Lewy v. S. Poverty Law Ctr., Inc.*, 723 F.Supp.2d 116, 2010 U.S. Dist. LEXIS 69493 (2010).

Purveyor of gossip was not entitled to benefit from "news gathering exception" to District of Columbia's long-arm statute for tortious injury inside District resulting from act outside District. D.C. Code 1981, § 13-423(a)(4). *Blumenthal v. Drudge*, 992 F. Supp. 44, 1998 U.S. Dist. LEXIS 5606 (1998).

News gathering exception to District of Columbia's long-arm statute prohibited district court from basing personal jurisdiction over publisher of allegedly libelous articles in California newspaper on activities of publisher's District bureau, despite plaintiff's contention that bureau not only gathered news for publication in local papers, but produced columns that were syndicated by publisher to some 1,500 other publications, and that such activity did not foster free flow of news, which was purpose of exception. D.C. Code 1981, § 13-423(a)(4). *Lohrenz v. Donnelly*, 958 F. Supp. 17, 1997 U.S. Dist. LEXIS 5787 (1997).

Newspaper publisher's maintenance of office in the District of Columbia for news gathering purposes was within the "news gathering exception" to provision the District of Columbia long arm statute authorizing exercise of jurisdiction over defendant who regularly engages in business in the District, and thus, such provision did not grant federal District Court jurisdiction over newspaper publisher, in libel action. D.C. Code 1981, § 13-423(a)(4). *Moncrief v. Lexington Herald-Leader Co.*, 631 F. Supp. 772, 1985 U.S. Dist. LEXIS 14758 (1985), affirmed by 807 F.2d 217, 257 U.S. App. D.C. 72, 1986 U.S. App. LEXIS 34784, 13 Media L. Rep. (BNA) 1762 (1986).

For purposes of subjecting news organization to personal jurisdiction for acts or omissions outside District of Columbia under applicable section of District's long-arm statute, mere act of newsgathering in District is not to be considered as doing or soliciting business or engaging in a persistent course of conduct, as those terms are used in such section. D.C. Code § 13-423(a)(4). *Akbar v. New York Magazine Co.*, 490 F. Supp. 60, 1980 U.S. Dist. LEXIS 13104 (1980).

Where defendant newspaper reporter allegedly made defamatory statements in two telephone calls from Wisconsin to the District of

Columbia with respect to the plaintiff, an Illinois physician, reporter had not acted in the District of Columbia within meaning of its long-arm statute, and no personal jurisdiction could be asserted over her. D.C. Code §§ 13-423(a)(3, 4), 13-424, 13-431. *Margoles v. Johns*, 333 F. Supp. 942, 1971 U.S. Dist. LEXIS 10715 (1971), affirmed by 483 F.2d 1212, 157 U.S. App. D.C. 209, 1973 U.S. App. LEXIS 9394 (1973).

Personal jurisdiction could not be asserted under the District of Columbia long-arm statute with respect to Wisconsin newspaper corporation, which was employer of defendant reporter who allegedly made defamatory statements in telephone calls from Wisconsin to District of Columbia, where local contact of corporation with District of Columbia arose solely out of the gathering of news in the district by three reporters assigned to District in which corporation maintained three permanent offices. D.C. Code §§ 13-421, 13-423(a)(4), (b). *Margoles v. Johns*, 333 F. Supp. 942, 1971 U.S. Dist. LEXIS 10715 (1971), affirmed by 483 F.2d 1212, 157 U.S. App. D.C. 209, 1973 U.S. App. LEXIS 9394 (1973).

Extent of jurisdiction, generally.

Congress' overall intent with respect to District of Columbia long-arm statute was to provide the District's courts, to the greatest extent possible, with essentially identical long-arm jurisdiction as was then available in Maryland and Virginia. D.C. Code § 13-423(a)(3); Code Va.1950, § 8-81.2; Code Md.1957, art. 75, §§ 96, 96(a)(4). *Margoles v. Johns*, 483 F.2d 1212, 1973 U.S. App. LEXIS 9394 (C.A.D.C. 1973).

In determining whether the notions of fair play and substantial justice would be furthered by a finding of personal jurisdiction over non-resident defendant, court must consider the following: the burden to defendant in defending the suit in the jurisdiction; jurisdiction's interest in adjudicating the dispute; plaintiff's interest in obtaining convenient and effective relief; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies. *Brunson v. Kalil & Co.*, 404 F.Supp.2d 221, 2005 U.S. Dist. LEXIS 40207 (2005).

The District of Columbia long-arm statute provides for jurisdiction to the fullest extent permissible under the Due Process Clause. U.S. Const.Amend. 14; D.C. Code 1981, § 13-423. *Material Supply Int'l, Inc. v. Sunmatch Indus. Co.*, 62 F.Supp.2d 13, 1999 U.S. Dist. LEXIS 13481 (1999).

District of Columbia long-arm statute is co-extensive in reach with personal jurisdiction allowed by due process clause. U.S.C.

Const.Amend. 5, 14; D.C. Code 1981, § 13-423(a)(1). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

District of Columbia long-arm statute permits exercise of personal jurisdiction over non-resident defendants to extent permitted by due process clause of United States Constitution. U.S. Const. Amend. 14; D.C. Code § 13-423. *Cohane v. Arpeja-California, Inc.*, 385 A.2d 153, 1978 D.C. App. LEXIS 448 (1978), writ of certiorari denied by 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651, 1978 U.S. LEXIS 3936 (1978).

District's long-arm statute permits exercise of personal jurisdiction over nonresident defendant to extent permitted by due process clause of United States Constitution. D.C. Code § 13-423(a)(1). *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*, 355 A.2d 808, 1976 D.C. App. LEXIS 505 (1976).

Long-arm statute was intended by Congress to permit in personam jurisdiction over nonresidents to extent allowed under due process clause. D.C. Code § 13-423(a)(1); U.S. Const. Amend. 5, 14. *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*, 339 A.2d 390, 1975 D.C. App. LEXIS 439 (1975).

Federal entities.

— In general.

District court lacked personal jurisdiction over individual Internal Revenue Service (IRS) employees, because plaintiff failed to allege requisite contacts between these California and Texas residents and District of Columbia under Constitution and District's long-arm statute. D.C. Code 1981, § 13-423. *Gardner v. United States*, 213 F.3d 735, 2000 U.S. App. LEXIS 12829 (C.A.D.C. 2000), writ of certiorari denied by 531 U.S. 1153, 121 S. Ct. 1099, 148 L. Ed. 2d 971, 2001 U.S. LEXIS 1238, 69 U.S.L.W. 3553 (2001).

District court lacked personal jurisdiction over numerous private defendants, none of whom resided or was incorporated in District of Columbia and none of whom transacted business in District, in connection with lottery held by Department of Interior to select lessee for parcel of land in Wyoming, that did not implicate First Amendment guarantee to petition government for redress of grievances. D.C. Code 1981, § 13-423(a)(1), (b). *Naartex Consulting Corp. v. Watt*, 722 F.2d 779, 1983 U.S. App. LEXIS 14944 (C.A.D.C. 1983).

United States District Court in District of Columbia could not assert personal jurisdiction under District of Columbia long-arm statute over employees of Internal Revenue Service (IRS) who were Arizona residents on basis of presence of headquarters of IRS in District of Columbia, in *Bivens* action alleging various

causes of action under Fifth Amendment and federal statutes, where only contact that employees had with District of Columbia was their employment with IRS. *Cornell v. Kellner*, 539 F.Supp.2d 311, 2008 U.S. Dist. LEXIS 23283 (2008).

State prosecutors had prosecutorial immunity from federal court suit alleging violation of claimant's due process and equal protection rights through conduct of prosecutions exhibiting "judicial racism." *Moore v. Motz*, 437 F.Supp.2d 88, 2006 U.S. Dist. LEXIS 41950 (2006).

State court judges had judicial immunity from federal court suit, alleging that they violated due process and equal protection rights of claimant through actions taken in their official capacities. *Moore v. Motz*, 437 F.Supp.2d 88, 2006 U.S. Dist. LEXIS 41950 (2006).

Federal district court sitting in District of Columbia lacked personal jurisdiction over state court judges, court officials, and prosecutors, in suit claiming violation of due process and equal protection rights. *Moore v. Motz*, 437 F.Supp.2d 88, 2006 U.S. Dist. LEXIS 41950 (2006).

Federal district court sitting in District of Columbia did not have personal jurisdiction, under long-arm statute, over federal judges, court officials, and prosecutors living in adjacent state, in suit claiming violation of due process and equal protection rights. *Moore v. Motz*, 437 F.Supp.2d 88, 2006 U.S. Dist. LEXIS 41950 (2006).

Prosecutorial immunity barred claim that attorneys in Justice Department failed to prosecute due process and equal protection violation claims brought by claimant. *Moore v. Motz*, 437 F.Supp.2d 88, 2006 U.S. Dist. LEXIS 41950 (2006).

Federal court officers, as well as judges, had absolute judicial immunity from suit claiming they violated due process and equal protection rights of claimant by displaying "judicial racism" in their handling of claimant's civil rights complaints. *Moore v. Motz*, 437 F.Supp.2d 88, 2006 U.S. Dist. LEXIS 41950 (2006).

Fact that Internal Revenue Service (IRS) special agent was employed by the Treasury Department, which was headquartered in District of Columbia, did not provide basis for any exercise of personal jurisdiction over agent in the District Court for the District of Columbia. *Islamic Am. Relief Agency v. Unidentified FBI Agents*, 394 F.Supp.2d 34, 2005 U.S. Dist. LEXIS 21570 (2005), affirmed in part and remanded in part by 477 F.3d 728, 375 U.S. App. D.C. 93, 2007 U.S. App. LEXIS 3269 (2007).

District of Columbia Superior Court could not exercise personal jurisdiction over customs officials employed in Florida, in inmate's pro se action against officials in their individual ca-

pacities alleging illegal seizure of property and failure to comply with Freedom of Information Act (FOIA); only one of the officials named in suit was alleged to have resided or been employed in District, and allegations as to such official were vague and conclusory. 5 U.S.C. § 552; D.C. Code 1981, §§ 13-422, 13-423. *Valdes v. Gordon*, 949 F. Supp. 21, 1996 U.S. Dist. LEXIS 19489 (1996), affirmed by 1997 U.S. App. LEXIS 19041 (D.C. Cir. June 5, 1997).

Former Central Intelligence Agency (CIA) employee's complaint against CIA officials did not demonstrate personal jurisdiction over officials under District of Columbia long-arm statute; complaint presented no factual connection between officials' activities and District of Columbia. D.C. Code 1981, § 13-423(a)(1). *Dickson v. United States*, 831 F. Supp. 893, 1993 U.S. Dist. LEXIS 12544 (1993).

— Law enforcement personnel, federal entities.

Under District of Columbia long-arm statute, federal district court could not exercise personal jurisdiction over nonresident federal officials against whom Bivens claims were asserted, absent any allegation that officials conducted any business or made any contracts for services in District of Columbia or that injury to plaintiff occurred in District. D.C. Code 1981, § 13-423(a)(1-4). *Marshall v. Reno*, 915 F. Supp. 426, 1996 U.S. Dist. LEXIS 1380 (1996).

United States district court for the District of Columbia lacked jurisdiction under District of Columbia long-arm statute over nonresident former assistant United States attorney in civil rights action arising out of arrest of plaintiffs where former assistant United States attorney's only link to fingerprint session in D.C. was her alleged participation in broad "conspiracy" to violate plaintiffs' civil rights and no facts showed that former assistant United States attorney actually joined "conspiracy." D.C. Code 1981, §§ 13-422, 13-423. *Edmond v. United States Postal Serv.*, 727 F. Supp. 7, 1989 U.S. Dist. LEXIS 13677 (1989), reversed in part by, remanded by 949 F.2d 415, 292 U.S. App. D.C. 240, 1991 U.S. App. LEXIS 27367 (1991).

Long-arm statute provided personal jurisdiction over FBI agents named in civil rights complaint who worked in District of Columbia; through affirmative association with enterprise located in district, agents availed themselves of privilege of conducting activities there, thus invoking benefits and protections of its laws and creating reasonable anticipation of being hauled into court, and further, business transacted by agents in District of Columbia was directly tied to acts charged in complaint. D.C. Code 1981, § 13-423(a)(1). *Rochon v. FBI*, 691

F. Supp. 1548, 1988 U.S. Dist. LEXIS 8760 (1988).

— **Prison officials, federal entities.**

Federal officials who lived and/or worked in District of Columbia were subject to district court's exercise of personal jurisdiction, pursuant to District of Columbia long-arm statute, for purposes of detainee's action alleging five-month jail overdetention; complaint averred that tortious acts at issue were committed while officials were physically in forum. *Wormley v. United States*, 601 F.Supp.2d 27, 2009 U.S. Dist. LEXIS 14118 (2009).

Court lacked personal jurisdiction, under District of Columbia's long-arm statute, over warden and other staff of Bureau of Prisons (BOP) corrections facility in North Carolina who were sued in their individual capacities for allegedly violating prisoner's constitutional rights; although BOP headquarters was located in the District of Columbia, none of the defendants resided in the District of Columbia, owned real property in the District of Columbia, or maintained a place of business in the District of Columbia, and prisoner's alleged injuries occurred in North Carolina. *Banks v. Lappin*, 539 F.Supp.2d 228, 2008 U.S. Dist. LEXIS 22532 (2008).

District court sitting in District of Columbia had no personal jurisdiction in federal prisoner's civil rights action over federal officers whose alleged tortious actions occurred in Pennsylvania and who did not appear to have other contacts with District of Columbia. *Banks v. Lappin*, 539 F.Supp.2d 228, 2008 U.S. Dist. LEXIS 22532 (2008).

Mere fact that defendants were employees of Bureau of Prisons, the headquarters office of which was in the District of Columbia, did not render them subject to suit in their individual capacities in the District of Columbia. *Thornberry v. Fed. Bureau of Prisons*, 535 F.Supp.2d 154, 2008 U.S. Dist. LEXIS 17958 (2008).

Former case manager's status as an employee of the Bureau of Prisons (BOP), which was headquartered in the District of Columbia, did not subject her to suit in her individual capacity in the District under the "transacts business" provision of the District's long-arm statute in action brought by former federal prisoner. *Walton v. Fed. Bureau of Prisons*, 533 F.Supp.2d 107, 2008 U.S. Dist. LEXIS 7966 (2008).

Mere fact that prison officials were employees of Federal Bureau of Prisons, which was headquartered in District of Columbia, did not render them subject to suit in their individual capacities in District of Columbia under long-arm statute. *Metcalfe v. Fed. Bureau of Prisons*, 530 F.Supp.2d 131, 2008 U.S. Dist. LEXIS 579 (2008).

Under District of Columbia's long-arm statute, district court lacked personal jurisdiction over federal prison officials in action brought by prisoner incarcerated in Southern District of Indiana, alleging that defendants denied him meaningful access to the courts and violated his due process rights by denying him access to publications pertaining to firearms; with exception of two defendants, the director of and chief trust fund manager for Federal Bureau of Prisons, defendants did not live in District of Columbia, nor was prisoner injured there. *Metcalfe v. Fed. Bureau of Prisons*, 530 F.Supp.2d 131, 2008 U.S. Dist. LEXIS 579 (2008).

District court lacked jurisdiction under the District of Columbia long-arm statute over personal capacity claims asserted against prison officials by an inmate seeking damages in connection with a Pennsylvania prison disciplinary proceeding; the mere fact that the officials were employees of the Federal Bureau of Prisons (BOP), the headquarters office of which was in the District, did not render them subject to suit in their individual capacities in the courts of the District of Columbia, and the complaint alleged no facts to establish that the inmate suffered any injury in the District, rather than in Pennsylvania. *Simpson v. Fed. Bureau of Prisons*, 496 F.Supp.2d 187, 2007 U.S. Dist. LEXIS 55745 (2007).

District court had personal jurisdiction over United States Parole Commission officers sued by District of Columbia prisoner denied parole under new federal guidelines, pursuant to District of Columbia long-arm statute; commission supervised district prisoners and parolees, parole violation warrants were often requested from parole officers working in district, and arrested parole violators were often incarcerated at district jail to await revocation hearings. *Fletcher v. District of Columbia*, 481 F.Supp.2d 156, 2007 U.S. Dist. LEXIS 21078 (2007), vacated in part by, dismissed in part by 550 F. Supp. 2d 30, 2008 U.S. Dist. LEXIS 36402 (D.D.C. 2008).

Wardens of federal prisons in Virginia and West Virginia were not subject to personal jurisdiction in District of Columbia in former inmate's Bivens action seeking damages arising from his allegedly illegal detention in prisons, even if Bureau of Prisons (BOP) was headquartered in District, where inmate was never incarcerated in District, and wardens were not located in District, and committed no acts in District. *Zakiya v. United States*, 267 F.Supp.2d 47, 2003 U.S. Dist. LEXIS 10197 (2003).

District of Columbia was not proper venue for former federal prisoner's action under Federal Tort Claims Act (FTCA) alleging that agents of Federal Bureau of Prisons (BOP) violated his constitutional rights by keeping him imprisoned three years beyond his judicially imposed sentence based upon his refusal to sign install-

ment schedule agreement for unpaid fines, even if policy upon which agents based their decision to detain prisoner was formulated in District, where implementation of policy to continue incarceration took place in Virginia, West Virginia, and Pennsylvania. *Zakiya v. United States*, 267 F.Supp.2d 47, 2003 U.S. Dist. LEXIS 10197 (2003).

District court did not have personal jurisdiction over nonresident case manager employed by Federal Bureau of Prisons (BOP) in federal prisoner's action against case manager and BOP for alleged violations of his statutory and constitutional rights, as federal prisoner did not allege that case manager entered into any business transactions or contracts in forum or that federal prisoner suffered any injury in forum as was necessary under forum's long-arm statute, federal prisoner merely alleged that case manager conducted business in forum via telecommunications, mail or fax without showing that his lawsuit arose out of such business, and federal prisoner made no showing as to whether district court's exercise of jurisdiction was consistent with due process. U.S.C. Const.Amend. 14; D.C. Code 1981, § 13-423. *Meyer v. Federal Bureau of Prisons*, 940 F. Supp. 9, 1996 U.S. Dist. LEXIS 13387 (1996).

Under District of Columbia long-arm statute, court lacked jurisdiction over employee in department of federal correction facility in Missouri who allegedly required inmate to work during days for which inmate had obtained pre-approval to take religious holidays; inmate alleged that employee resided in Missouri, inmate failed to allege that employee conducted any business or made any contract for services in District of Columbia, and inmate did not allege that he was harmed in any way in District of Columbia by employee. D.C. Code 1981, § 13-423(a)(1-4). *Meyer v. Federal Bureau of Prisons*, 929 F. Supp. 10, 1996 U.S. Dist. LEXIS 7344 (1996).

Under District of Columbia long-arm statute, federal prisoner's allegations were insufficient to support court's exercise of personal jurisdiction over nonresident prison officials; prisoner failed to allege that officials conducted any business or made any contracts for services in District of Columbia, or that he suffered any injury in District of Columbia. D.C. Code 1981, § 13-423(a)(1-4). *Risley v. Hawk*, 918 F. Supp. 18, 1996 U.S. Dist. LEXIS 2280 (1996), affirmed by 108 F.3d 1396, 323 U.S. App. D.C. 367, 1997 U.S. App. LEXIS 10634 (1997).

Under District of Columbia long arm statute, federal district court for District of Columbia did not have personal jurisdiction over employee of Federal Bureau of Prisons who worked in Tennessee or over Florida state attorneys; plaintiff did not allege that defendants had conducted any business or made any contracts for services within District of Columbia,

and plaintiff alleged no injury to have been suffered in District of Columbia. D.C. Code 1981, § 13-423. *Meyer v. Reno*, 911 F. Supp. 11, 1996 U.S. Dist. LEXIS 2829 (1996).

Employees of Federal Bureau of Prisons who worked in Minnesota, were not alleged to have conducted any business or made any contracts for services in the District of Columbia, and were not alleged to have detained prisoner in the District were not subject to long-arm jurisdiction in prisoner's suit based on alleged illegal detention. D.C. Code 1981, § 13-423. *Robertson v. Merola*, 895 F. Supp. 1, 1995 U.S. Dist. LEXIS 11076 (1995).

The United States District Court for the District of Columbia lacked jurisdiction under District of Columbia long-arm statute over Federal Bureau of Prisons employees who worked in New York and those who worked in Pennsylvania in inmate's Bivens action where those employees were not alleged to have conducted any business or made any contract for services in the District of Columbia and no injury was alleged to have been suffered in the District of Columbia. D.C. Code 1981, § 13-423. *Deutsch v. United States DOJ*, 881 F. Supp. 49, 1995 U.S. Dist. LEXIS 4150 (1995), affirmed by 93 F.3d 986, 1996 U.S. App. LEXIS 41754 (D.C. Cir. 1996).

District court lacked personal jurisdiction over Washington officials in connection with inmate's § 1983 claim against them; inmate, incarcerated at District of Columbia facility, alleged no contacts between Washington officials and District which would bring them within reach of District's long-arm statute. D.C. Code 1981, § 13-423; 42 U.S.C. § 1983. *Charles v. Kelly*, 790 F. Supp. 344, 1992 U.S. Dist. LEXIS 5627 (1992), appeal dismissed by 1993 U.S. App. LEXIS 5452 (D.C. Cir. Jan. 29, 1993).

Promulgation of regulations in Washington, D.C., which required that federal prisoner apply portion of his prison employment earnings toward restitution, fines, and assessments, was not overt act in furtherance of conspiracy in which officials of federal correctional institution in North Carolina joined by mere fact that they enforced those regulations, and thus, United States District Court for District of Columbia could not exercise personal jurisdiction under long-arm statute over North Carolina prison officials, who had no direct contacts with District of Columbia, in action by prisoner alleging constitutional violations in removing inmate from work assignment pursuant to regulations. D.C. Code 1981, § 13-423. *Dorman v. Thornburgh*, 740 F. Supp. 875, 1990 U.S. Dist. LEXIS 8671 (1990), appeal dismissed in part by, affirmed in part by 955 F.2d 57, 293 U.S. App. D.C. 364, 1992 U.S. App. LEXIS 1430 (1992).

Even assuming that personal jurisdiction could be established over out-of-state federal prison officials, who enforced prison regulations promulgated in District of Columbia, on conspiracy theory under long-arm statute, such exercise of jurisdiction would violate out-of-state officials' due process rights. D.C. Code 1981, § 13-423; U.S. Const. Amends. 5, 14. *Dorman v. Thornburgh*, 740 F. Supp. 875, 1990 U.S. Dist. LEXIS 8671 (1990), appeal dismissed in part by, affirmed in part by 955 F.2d 57, 293 U.S. App. D.C. 364, 1992 U.S. App. LEXIS 1430 (1992).

Under District of Columbia long-arm statute, district court lacked personal jurisdiction over federal prison officials in connection with injuries allegedly sustained by inmate while in Missouri prison; officials did not live in District of Columbia, nor did they transact their individual business there. D.C. Code 1981, § 13-423. *Pollack v. Meese*, 737 F. Supp. 663, 1990 U.S. Dist. LEXIS 3379 (1990).

District court lacked jurisdiction over federal official insofar as § 1985 complaint sought relief against official in his individual capacity; official was not personally served within District of Columbia, was not a resident of District and was not within District's long-arm statute. 42 U.S.C. § 1985; D.C. Code 1981, § 13-423. *Delgado v. Federal Bureau of Prisons*, 727 F. Supp. 24, 1989 U.S. Dist. LEXIS 15429 (1989).

Decision, in Washington D.C., to assign Cuban detainees to a single unit was not a sufficient basis upon which to exercise personal jurisdiction over federal official under District of Columbia long-arm statute, where plaintiff prisoner's purported injury, his assignment to the unit, occurred in Texas. D.C. Code 1981, § 13-423. *Delgado v. Federal Bureau of Prisons*, 727 F. Supp. 24, 1989 U.S. Dist. LEXIS 15429 (1989).

Federal jurisdiction, generally.

Even though subject matter jurisdiction in arrestees' constitutional tort action against Postal Service inspectors, government, and prosecutors was based on federal question, arrestees had to rely on District of Columbia law to sue nonresident defendants where no federal long-arm statute applied. D.C. Code 1981, § 13-423(a)(3). *Edmond v. United States Postal Serv. Gen. Counsel*, 949 F.2d 415, 1991 U.S. App. LEXIS 27367 (C.A.D.C. 1991), remanded by 79 F.3d 372, 1996 U.S. App. LEXIS 4726 (4th Cir. Md. 1996).

Under the "domestic relations exception," federal court will not take jurisdiction over a case if that would require it to grant a divorce, determine alimony or support obligations, or resolve parental conflicts over custody of their children; however, federal court should not simply avoid all diversity cases having intrafamily

aspects. *Bennett v. Bennett*, 682 F.2d 1039, 1982 U.S. App. LEXIS 17194 (C.A.D.C. 1982).

In diversity action in United States District Court for District of Columbia, court correctly looked to jurisdictional statute of District of Columbia. D.C. Code § 13-423. *Gatewood v. Fiat, S. p. A.*, 617 F.2d 820, 1980 U.S. App. LEXIS 21116 (C.A.D.C. 1980).

United States District Court for the District of Columbia engages in a two-part inquiry to determine whether it may exercise personal jurisdiction over a non-resident defendant: first, the court must determine whether jurisdiction may be exercised under the District of Columbia's long-arm statute; second, the Court must determine whether the exercise of personal jurisdiction satisfies due process requirements. *Walton v. Fed. Bureau of Prisons*, 533 F.Supp.2d 107, 2008 U.S. Dist. LEXIS 7966 (2008).

District Court lacked personal jurisdiction over Bureau of Indian Affairs (BIA) Regional Director, requiring dismissal of all claims against Director in action alleging that gasoline distribution company's due process rights were violated when BIA invalidated company's agreement to manage a gasoline distribution business for Indian tribe; claim did not arise out of Director's activities in the District of Columbia, and Director had insufficient contacts with District to subject him to jurisdiction pursuant to District's long-arm statute. *Gasplus, L.L.C. v. United States DOI*, 466 F.Supp.2d 43, 2006 U.S. Dist. LEXIS 88851 (2006).

For a court to exercise personal jurisdiction over a non-resident, prospective defendant's contacts with the jurisdiction must be such that the defendant reasonably could have anticipated being sued in the forum state in an action arising out of those contacts. *De Jesus Baltierra v. W. Va. Bd. of Med.*, 253 F.Supp.2d 9, 2003 U.S. Dist. LEXIS 5171 (2003), affirmed by 2004 U.S. App. LEXIS 11279 (D.C. Cir. June 7, 2004).

When a defendant asserts that federal court lacks personal jurisdiction, the burden is on the plaintiff to prove that jurisdiction can be exercised. *De Jesus Baltierra v. W. Va. Bd. of Med.*, 253 F.Supp.2d 9, 2003 U.S. Dist. LEXIS 5171 (2003), affirmed by 2004 U.S. App. LEXIS 11279 (D.C. Cir. June 7, 2004).

Federal court sitting in District of Columbia had personal jurisdiction over non-resident attorneys who had represented tort plaintiff in District of Columbia litigation, in malpractice suit by plaintiff's children who alleged that they were negligently advised not to include their claims in suit; claim "arose out of" attorneys' activities in District, they could reasonably have anticipated being hauled into District of Columbia court by children, and court, which had had exclusive jurisdiction over underlying

tort suit, had interest in adjudicating related malpractice claim. *Jacobsen v. Oliver*, 201 F.Supp.2d 93, 2002 U.S. Dist. LEXIS 7938 (2002).

In federal question case the United States District Court for the District of Columbia had to first look to District of Columbia long-arm statute to determine whether it had personal jurisdiction, and if that analysis demonstrated that defendant would not be subject to jurisdiction to District of Columbia courts, courts could look to rule of Federal Procedure, which may permit more expensive jurisdictional analysis. D.C. Code 1981, § 13-423(a)(1, 2), (b); Fed.R.Civ.Proc. Rule 4(k), 18 U.S.C. COMSAT Corp. v. Finshipyards S.A.M., 900 F. Supp. 515, 1995 U.S. Dist. LEXIS 14701 (1995).

In diversity action brought in District of Columbia, court may look to District of Columbia long-arm statute to determine whether it has personal jurisdiction, and long-arm statute permits exercise of personal jurisdiction to full extent permitted by due process clause of Constitution. U.S. Const.Amend. 14; D.C. Code 1981, § 13-423. *Novak-Canzeri v. Saud*, 864 F.Supp. 203, 1994 U.S. Dist. LEXIS 19432 (1994).

Service of process had to be authorized under District of Columbia long-arm statute in order for district court to exercise personal jurisdiction over British defendants in RICO suit. 18 U.S.C. § 1961 et seq.; D.C. Code 1981, § 13-423(a)(1). *Dooley v. United Technologies Corp.*, 803 F. Supp. 428, 1992 U.S. Dist. LEXIS 15955 (1992).

District of Columbia law was source of federal district court's power of personal jurisdiction over nonresident defendant in suit brought in District of Columbia. Fed.Rules Civ.Proc.Rule 4(d)(3), (e), 18 U.S.C.; D.C. Code 1981, § 13-423. *National Coal Asso. v. Clark*, 603 F. Supp. 668, 1984 U.S. Dist. LEXIS 21668 (1984).

Permissible reach of in personam jurisdiction of the United States District Court in federal question cases is not necessarily coextensive with jurisdiction of state court in which federal district is located. *Investment Co. Institute v. United States*, 550 F. Supp. 1213, 1982 U.S. Dist. LEXIS 17743 (1982).

Plaintiff who seeks to enforce claim as matter of federal right may be able to bring foreign defendant before federal district court where he might not be able to do so in state court embracing same district; conversely there may be instances in which state's maximum jurisdictional reach may exceed that given by Congress to federal court within its borders. *Investment Co. Institute v. United States*, 550 F. Supp. 1213, 1982 U.S. Dist. LEXIS 17743 (1982).

Forum non conveniens.

Convenience of parties and witnesses and interest of justice warranted transfer from Dis-

trict of Columbia to Northern District of West Virginia of inmate's action alleging that agents of Federal Bureau of Prisons (BOP) violated his constitutional rights by keeping him imprisoned three years beyond his judicially imposed sentence based upon his refusal to sign installment schedule agreement for unpaid fines, where portion of prisoner's incarceration occurred in West Virginia, and warden was not subject to personal jurisdiction in District of Columbia. *Zakiya v. United States*, 267 F.Supp.2d 47, 2003 U.S. Dist. LEXIS 10197 (2003).

Where resident plaintiff alleged that automobile dealer's refusal to accept return of vehicle pursuant to representations made by salesman caused injury to plaintiff's credit rating and mental and physical well-being, District of Columbia was not a forum non conveniens to defendant automobile dealer which conducted sales activity within district and was located in nearby suburb. D.C. Code §§ 13-423(a)(4), 13-425. *Aiken v. Lustine Chevrolet, Inc.*, 392 F. Supp. 883, 1975 U.S. Dist. LEXIS 13158 (1975).

Questions of forum non conveniens are generally committed to discretion of trial court. *Guevara v. Reed*, 598 A.2d 1157, 1991 D.C. App. LEXIS 300 (1991).

One overriding requirement for application of forum non conveniens is availability of alternative forum. *Guevara v. Reed*, 598 A.2d 1157, 1991 D.C. App. LEXIS 300 (1991).

Superior Court of the District of Columbia was not appropriate forum for personal injury action brought by District residents against Maryland driver and corporate owner of subsidiary which owned vehicle arising out of motor vehicle accident in New Jersey where Superior Court lacked jurisdiction over Maryland driver, an essential party who had not been served with process, corporation which had international headquarters in Maryland was only being sued on respondeat superior theory, and Maryland was an available forum. *Guevara v. Reed*, 598 A.2d 1157, 1991 D.C. App. LEXIS 300 (1991).

When court approves or orders dismissal on forum non conveniens grounds, dismissal is conditioned on waiver of statute of limitations in alternative forum. *Guevara v. Reed*, 598 A.2d 1157, 1991 D.C. App. LEXIS 300 (1991).

Dismissal, on ground of forum non conveniens, of wrongful death action arising out of hemodialysis treatment of resident in Maryland was not an abuse of discretion where alleged tortious conduct occurred in Maryland, physicians named as defendants resided in Maryland and were licensed to practice medicine in Maryland, professional corporation composed of such physicians was Maryland corporation and owner of Maryland hemodialysis center where resident was treated was Delaware corporation qualified to do business exclu-

sively in Maryland. Md.Code, Courts and Judicial Proceedings, § 3-904; D.C. Code § 13-423(a)(4). *Carr v. Bio-Medical Applications of Washington, Inc.*, 366 A.2d 1089, 1976 D.C. App. LEXIS 420 (1976).

General or specific jurisdiction.

Courts of the District of Columbia may assert general jurisdiction over a defendant that is doing business in the District through the medium of the Internet. *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 2002 U.S. App. LEXIS 11674 (C.A.D.C. 2002).

Shoulder surgery patient's product liability claims against nonresident manufacturer of pain pump did not arise from manufacturer's conduct in District of Columbia, and thus District of Columbia district court lacked specific personal jurisdiction over manufacturer under District's long-arm statute, where patient's surgeries and subsequent treatments had been performed in New York, and manufacturer's marketing activities within District of Columbia, if any, had no connection with patient's negligence claim. *Marshall v. I-Flow, LLC*, 2012 WL 1372103 (2012).

Court could not exercise either general or specific personal jurisdiction over deputy prosecutor for a Kazakhstan city, former head of an investigation group of Kazakhstan's Interior Ministry, a deputy to the head of the Investigation Directorate of Kazakhstan's Agency on Economic Crimes and Corruption (Finpol), the deputy head of Kazakhstan city detention center or a senior officer of the detention center in suit brought by two Kazakhstani citizens and three United States corporations under the Alien Tort Statute; nowhere in complaint did plaintiffs allege any facts showing that those individual officials had any, let alone "continuous and systematic," contact with the United States, and there were no allegations that officials in any way directed their activities in investigating, prosecuting, detaining individual plaintiffs toward the United States. *Marshall v. I-Flow, LLC*, 2012 WL 1372103 (2012).

Purported owner of copyright or pertinent exclusive rights to motion picture was not entitled to jurisdictional discovery in its copyright infringement action against 23,222 John Doe defendants, arising from defendants' alleged use of "BitTorrent protocol" to download and upload pirated copy of movie, as to putative defendants who resided outside of District; for purposes of District of Columbia's long-arm statute, owner resided in California such that, under test regarding location of injury, no amount of discovery could affect analysis placing location of injury in California, and, alternatively, under theory of economic injury, situs of owner's injuries was location of defendants' downloads and uploads. *Nu Image, Inc. v. Doe*,

799 F.Supp.2d 34, 2011 U.S. Dist. LEXIS 83293 (2011).

District court lacked specific personal jurisdiction over energy company sued by municipalities alleging illegal agreement to artificially inflate price of natural gas, pursuant to District of Columbia long-arm statute; municipalities' allegation that company had participated in subcommittee of National Petroleum Council (NPC) that prepared natural gas pricing at high levels lacked factual particularity. *City of Moundridge v. Exxon Mobil Corp.*, 471 F.Supp.2d 20, 2007 U.S. Dist. LEXIS 2022 (2007).

Competitor's display of allegedly infringing product at trade show in District of Columbia did not constitute infringing "offer to sell" product necessary to establish specific personal jurisdiction over competitor in patent infringement action pursuant to District of Columbia's long-arm statute, even though approximately one hundred clinical professionals left their contact information for competitor, and competitor's booth made product more visible to potential customers, where price for allegedly infringing product was not made available to show attendees. *Medical Solutions v. C Change Surgical LLC*, 468 F.Supp.2d 130, 2006 U.S. Dist. LEXIS 93855 (2006), affirmed by 541 F.3d 1136, 2008 U.S. App. LEXIS 19173, 88 U.S.P.Q.2d (BNA) 1275 (Fed. Cir. 2008).

Competitor's display of allegedly infringing product at trade show in District of Columbia did not constitute infringing "use" of product necessary to establish specific personal jurisdiction over competitor in patent infringement action pursuant to District of Columbia's long-arm statute. *Medical Solutions v. C Change Surgical LLC*, 468 F.Supp.2d 130, 2006 U.S. Dist. LEXIS 93855 (2006), affirmed by 541 F.3d 1136, 2008 U.S. App. LEXIS 19173, 88 U.S.P.Q.2d (BNA) 1275 (Fed. Cir. 2008).

For personal jurisdiction to exist over individual Israeli defendants, they were required to have sufficient minimum contacts with District of Columbia, which could exist in two forms: (1) general contacts that were continuous and systematic, such that the forum had jurisdiction over any matter involving the defendants, and (2) specific contacts that gave rise to the actual claims against the defendants. *Doe I v. State of Israel*, 400 F.Supp.2d 86, 2005 U.S. Dist. LEXIS 27471 (2005).

District Court for the District of Columbia did not have general jurisdiction over government agent who resided and worked in Missouri. *Islamic Am. Relief Agency v. Unidentified FBI Agents*, 394 F.Supp.2d 34, 2005 U.S. Dist. LEXIS 21570 (2005), affirmed in part and remanded in part by 477 F.3d 728, 375 U.S. App. D.C. 93, 2007 U.S. App. LEXIS 3269 (2007).

Personal jurisdiction may exist under Washington D.C. long-arm statute either if defen-

dant operates so continuously and substantially in district that it is fair to allow anyone to sue defendant in district wherever claim arose, or if claims asserted arise out of any business that defendant transacted in district. D.C. Code 1981, § 13-423(a)(1). *Quetel Corp. v. Columbia Communications Int'l*, 779 F. Supp. 183, 1991 U.S. Dist. LEXIS 18567 (1991).

If nonresident defendant's business contacts are sufficiently continuous and systematic within forum jurisdiction, court may exercise general jurisdiction. U.S.C. Const.Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

If nonresident defendant's business contacts within forum jurisdiction are not sufficiently continuous and systematic, court may assert specific jurisdiction over defendant whenever defendant has purposefully directed its activities at residents of forum, and the litigation has resulted from alleged injuries that arise out of or relate to those activities. U.S. Const.Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

Nexus requirement of District of Columbia long-arm statute is satisfied, and specific jurisdiction may be exercised, if claim either arises out of or relates to nonresident defendant's business activity. D.C. Code 1981, § 13-423(b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

In determining existence of in personam jurisdiction over nonresident defendant, two fundamentally different types of contacts exist; those which are related to cause of action, and those which are not. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

In determining in personam jurisdiction over nonresident defendant, contacts unrelated to cause of action are assigned less weight and must be continuous and substantial to support in personam jurisdiction, while contacts related to cause of action are given substantially more weight and even one such contact may be sufficient to support in personam jurisdiction. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

Absent any other direct involvement in District of Columbia, corporation's particular transaction giving rise to legal claims may subject it to personal jurisdiction under long-arm statute. D.C. Code § 13-423. *AMAF International Corp. v. Ralston Purina Co.*, 428 A.2d 849, 1981 D.C. App. LEXIS 242 (1981).

In general.

In determining whether exercise of personal jurisdiction over defendant is reasonable or fair, court may examine forum state's interest

in adjudicating the dispute, and if plaintiff is not a resident of the forum, forum state's legitimate interests in the dispute have considerably diminished. *Formica v. Cascade Candle Co.*, 125 F.Supp.2d 552, 2001 U.S. Dist. LEXIS 116 (2001).

While District of Columbia long-arm statute is interpreted broadly and factual disputes are resolved in favor of plaintiff, plaintiff must allege some specific facts evidencing purposeful activity by defendant in the District by which it invoked benefits and protections of the District's laws. D.C. Code 1981, § 13-423(a)(1, 2), (b). *COMSAT Corp. v. Finshipyards S.A.M.*, 900 F. Supp. 515, 1995 U.S. Dist. LEXIS 14701 (1995).

District of Columbia can be viewed as state for limited purpose such as creating interstate agency. *Clarke v. Washington Metropolitan Area Transit Authority*, 654 F. Supp. 712, 1985 U.S. Dist. LEXIS 16329 (1985), affirmed by 808 F.2d 137, 257 U.S. App. D.C. 242 (1987).

In personam jurisdiction generally is determined as of the commencement of an action. In re Orshansky, 804 A.2d 1077, 2002 D.C. App. LEXIS 488 (2002).

It is reasonable and fair for District of Columbia to exercise specific jurisdiction where a nonresident defendant has purposefully directed its activities at District residents, and claims against it by a District resident arise out of or relate to, or have a substantial connection with, the business transacted in the District. U.S.C. Const.Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

District of Columbia has a manifest interest in providing a convenient forum in which its residents may seek relief for injuries inflicted by nonresident defendant, especially where litigation within District would not impose an undue burden on nonresident defendant. U.S. Const.Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

Injury within District, generally.

Failure to make showing of injuries occurring in District of Columbia, as required by long arm statute, precluded personal jurisdiction in suit by representative of company, alleging that son of principal violated Racketeer Influenced and Corrupt Organizations Act (RICO), by arranging for her to be attacked by "hitman" as part of interference with prospective relationship under which representative would serve as exclusive case manager in qui tam action against company; physical injury damages were sustained by representative in California, where she lived, rather than District. *Elemery v. Holzmans*, 533 F.Supp.2d 116, 2008 U.S. Dist.

LEXIS 8265 (2008), transfer denied by 533 F. Supp. 2d 144, 2008 U.S. Dist. LEXIS 8238 (D.D.C. 2008).

"Domicile," for purposes of determining appropriateness of exercising personal jurisdiction under provision of District of Columbia's long-arm statute, granting personal jurisdiction over defendant who causes tortious injury in the District of Columbia by an act or omission in the District, requires both physical presence and intent to remain for an indefinite period of time. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

In distinguishing between act or omission which produces injury and injury itself, when determining whether exercise of personal jurisdiction is appropriate under provision of District of Columbia long-arm statute, granting personal jurisdiction over defendant who causes tortious injury in the District of Columbia by an act or omission in the District, locus of injury for individual suffering peculiarly at home is her home. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

In determining whether exercise of personal jurisdiction is appropriate under provision of District of Columbia long-arm statute, granting personal jurisdiction over defendant who causes tortious injury in the District of Columbia by an act or omission in the District, district court must distinguish between injury suffered and any pecuniary losses, which are merely one measure of such injury. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

Even if girlfriend, a citizen of the Russian Federation, committed fraud in District of Columbia when she allegedly misrepresented that she would assist boyfriend in obtaining apartment in Moscow, Russia and that she would repay boyfriend for her personal expenses, boyfriend did not suffer any injury from the alleged fraud in the District of Columbia, so as to support exercise of personal jurisdiction over girlfriend, under provision of District of Columbia long-arm statute, granting personal jurisdiction over defendant who causes tortious injury in the District of Columbia by an act or omission in the District. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

In order for provision of District of Columbia long-arm statute, granting personal jurisdiction

based on conduct over person who causes tortious injury in the District of Columbia by an act or omission in the District, to apply, both tortious injury and act causing the injury must occur in the District of Columbia. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

District Court did not have personal jurisdiction, pursuant to District of Columbia's general jurisdiction statute, over federal government contractor with respect to claim by contractor's employee that contractor failed to provide him per diem payments, inasmuch as former employee served contractor at its headquarters in Virginia, not within District. *Gowens v. DynCorp*, 132 F.Supp.2d 38, 2001 U.S. Dist. LEXIS 2557 (2001).

District of Columbia long-arm statute requires that the act and the effect on the party, or injury, take place in the District of Columbia. D.C. Code 1981, § 13-423. *Moskovits v. Drug Enforcement Admin.*, 774 F. Supp. 649, 1991 U.S. Dist. LEXIS 12670 (1991).

Court in District of Columbia did not have long-arm jurisdiction over Drug Enforcement Administration attorney with respect to claims arising out of forfeiture where search warrant leading to seizure was issued in the Eastern District of Pennsylvania, attorney was a resident of Virginia and was employed in Virginia, and injuries to the claimant occurred in either Pennsylvania or Florida. D.C. Code 1981, § 13-423. *Moskovits v. Drug Enforcement Admin.*, 774 F. Supp. 649, 1991 U.S. Dist. LEXIS 12670 (1991).

Insurance or surety contracts.

Even in noninsurance cases the activities of various middlemen may be relevant to evaluation of the contacts of defendant with the forum state, in determining propriety of long-arm jurisdiction; it is particularly appropriate when evaluating contacts of a products liability insurer with forum state to consider its relationship with its insured and the insured's contacts with the forum state. D.C. Code 1981, § 13-423(a)(3); U.S. Const. Amends. 5, 14. *Eli Lilly & Co. v. Home Ins. Co.*, 794 F.2d 710, 1986 U.S. App. LEXIS 27494 (C.A.D.C. 1986), writ of certiorari denied by 479 U.S. 1060, 107 S. Ct. 940, 93 L. Ed. 2d 990, 1987 U.S. LEXIS 401, 55 U.S.L.W. 3494 (1987), writ of certiorari denied by 479 U.S. 1060, 107 S. Ct. 940, 93 L. Ed. 2d 991, 1987 U.S. LEXIS 402, 55 U.S.L.W. 3494 (1987).

Likelihood of impleader actions is not the sole reason for considering the contacts of an insured with a forum state in determining foreseeability, for long-arm jurisdiction purposes, of an insurer being hauled into court in

that jurisdiction; insurers must carefully gauge the riskiness of the products they insure and in determining scope of the risk they have covered must consider the scale on which insured has distributed a potentially dangerous product and an insurer has a commercial interest in knowing how, and to what degree, an insured has contacts with the forum state. D.C. Code 1981, § 13-423(a)(3); U.S. Const. Amends. 5, 14. *Eli Lilly & Co. v. Home Ins. Co.*, 794 F.2d 710, 1986 U.S. App. LEXIS 27494 (C.A.D.C. 1986), writ of certiorari denied by 479 U.S. 1060, 107 S. Ct. 940, 93 L. Ed. 2d 990, 1987 U.S. LEXIS 401, 55 U.S.L.W. 3494 (1987), writ of certiorari denied by 479 U.S. 1060, 107 S. Ct. 940, 93 L. Ed. 2d 991, 1987 U.S. LEXIS 402, 55 U.S.L.W. 3494 (1987).

District of Columbia statute [D.C. Code 1981, § 13-423(a)(6)] conferring jurisdiction over persons who "[contract] to insure. . . any. . . contract" contemplates secondary liability that arises from guaranty agreement. *United States v. Rollinson*, 629 F. Supp. 581, 1986 U.S. Dist. LEXIS 28697 (1986), affirmed by 866 F.2d 1463, 275 U.S. App. D.C. 345, 1989 U.S. App. LEXIS 947 (1989).

Guarantor, by guaranteeing contract to be performed within District of Columbia, subjected himself to personal jurisdiction in the District. D.C. Code 1981, § 13-423(a)(6); U.S.C. Const. Amend. 14. *United States v. Rollinson*, 629 F. Supp. 581, 1986 U.S. Dist. LEXIS 28697 (1986), affirmed by 866 F.2d 1463, 275 U.S. App. D.C. 345, 1989 U.S. App. LEXIS 947 (1989).

Nonresident defendants who had signed guaranties of note that was governed by District of Columbia law, and that was to be performed in forum by tendering payment to lender at its District of Columbia office, sufficiently "transacted business in District of Columbia" to be subject to its long-arm jurisdiction in suit on guaranties. D.C. Code 1981, § 13-423. *Federal Deposit Ins. Corp. v. O'Donnell*, 136 B.R. 585, 1991 U.S. Dist. LEXIS 11882 (1991).

Exercising personal jurisdiction over chief executive officer (CEO) of Illinois insurers and over vice-president and director would violate the due process clause in policyholder's suit alleging that they authorized wrongful payment of claim to insured and attorney in the District of Columbia; they could not reasonably have anticipated being hauled into court in the District, as individual defendants. U.S. Const. Amend. 5; D.C. Code 1981, § 13-423(a)(1). *Flocco v. State Farm Mut. Auto. Ins. Co.*, 752 A.2d 147, 2000 D.C. App. LEXIS 120 (2000).

Intellectual property.

— Copyright, intellectual property.

Copyright owner was not entitled to jurisdictional discovery to learn true identities, ad-

resses, and telephone numbers of unidentified participants in filesharing swarm, in action alleging participants violated Copyright Act by illegally downloading, uploading, and distributing owner's copyrighted movie over Internet, absent showing that participants from whom jurisdictional discovery was sought resided in District of Columbia within meaning of District's long-arm statute. *People Pictures v. Group of Participants in Filesharing Swarm Identified By Hash*, 831 F.Supp.2d 333, 2011 U.S. Dist. LEXIS 147859 (2011).

Alleged infringer's attendance of training session in District of Columbia, and receipt of award by an employee of another alleged infringer could not support exercise of personal jurisdiction in District under "transacted business" provision of District's long-arm statute, absent relation between those contacts and claim of copyright infringement. D.C. Code 1981, § 13-423(a)(1), (b). *Freiman v. Lazur*, 925 F. Supp. 14, 1996 U.S. Dist. LEXIS 6412 (1996).

Alleged infringer's registration of copyright for allegedly infringing computer program at Copyright Office was not "transacting business" in District of Columbia, as required for personal jurisdiction under District's long-arm statute; registration of copyright was protected by government contacts principle and could not serve as basis for personal jurisdiction. D.C. Code 1981, § 13-423(a)(1). *Freiman v. Lazur*, 925 F. Supp. 14, 1996 U.S. Dist. LEXIS 6412 (1996).

Meeting between alleged copyright infringer and employee of federal agency in District of Columbia did not permit exercise of personal jurisdiction over alleged infringer under "transacting business" provision of District of Columbia long-arm statute, where government contracts allegedly leading to infringement of copyrighted computer program were executed and performed outside of District, government contractors did not have offices in District, and employee's office in headquarters was in Maryland. U.S. Const. Amend. 14; D.C. Code 1981, § 13-423(a)(1). *Freiman v. Lazur*, 925 F. Supp. 14, 1996 U.S. Dist. LEXIS 6412 (1996).

Copyright holders' allegation that government contractors conspired to injure them when contractors' representatives met for lunch in District of Columbia satisfied "tortious act" requirement for personal jurisdiction under District Columbia's long-arm statute. D.C. Code 1981, § 13-423(a)(3). *Freiman v. Lazur*, 925 F. Supp. 14, 1996 U.S. Dist. LEXIS 6412 (1996).

Although copyright holders made prima facie showing that tortious act occurred in District of Columbia when government contractors allegedly conspired to injure them, they failed to make prima facie showing that tortious injury occurred in District, as required for personal jurisdiction under District's long-arm statute;

contracts which allegedly led to infringement of plaintiffs' copyright were awarded by agencies with offices outside of District or by prime contractors with offices outside District. D.C. Code 1981, § 13-423(a)(3). *Freiman v. Lazur*, 925 F. Supp. 14, 1996 U.S. Dist. LEXIS 6412 (1996).

Although New Jersey residents, who were corporate officers and part owners of parent company of District of Columbia newspaper which published alleged copyright infringing article, may have conducted substantial business in the District, they were not subject to in personam jurisdiction under long-arm statute as such activities were conducted on behalf of the corporation and there was no allegation that they conducted any business as individuals; their alleged failure to supervise activities of subsidiary in a manner which would have prevented infringement, could not be considered acts or omissions in their individual capacities. D.C. Code § 13-423(a)(1, 3, 4). *Quinto v. Legal Times of Washington, Inc.*, 506 F. Supp. 554, 1981 U.S. Dist. LEXIS 10467 (1981).

Copyright infringement claim sounded in tort, for long-arm jurisdictional purposes. D.C. Code 1981, § 13-423(a)(4). *American Directory Service Agency v. Beam*, 131 F.R.D. 635, 1990 U.S. Dist. LEXIS 3486 (1990), modified by 131 F.R.D. 15, 1990 U.S. Dist. LEXIS 5873, Copy. L. Rep. (CCH) P26575, 17 Fed. R. Serv. 3d (Callaghan) 458 (D.D.C. 1990).

— In general.

By bringing lawsuit against Food and Drug Administration (FDA) seeking to force FDA to regulate all ultrasound contrast agents in same manner, patentees did not submit themselves to jurisdiction in District of Columbia in plaintiffs' suit for declaratory judgment that they were not infringing patents relating to ultrasound contrast agents. D.C. Code 1981, § 13-423(a)(1). *Mallinckrodt Med. v. Sonus Pharms.*, 989 F. Supp. 265, 1998 U.S. Dist. LEXIS 136 (1998).

— Trademark, intellectual property.

District of Columbia long-arm statute, when applied as a local court would apply it, would permit district court to assume personal jurisdiction over Australian wine producer and Australian exporter in German plaintiff's trademark infringement action against producer and exporter and others where claims related to sales of Australian defendants' wine in the United States generally and in District specifically. D.C. Code § 13-423(a)(1). *Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distributors Pty., Ltd.*, 647 F.2d 200, 1981 U.S. App. LEXIS 18997 (C.A.D.C. 1981).

Alleged injury to trademark owner and licensee did not occur in the District of Columbia (D.C.), and thus D.C. district court could not

exercise specific personal jurisdiction over Egyptian private equity firm in owner and licensee's trademark infringement suit under the section of the D.C. long-arm statute authorizing courts to exercise jurisdiction over any person who caused tortious injury in D.C. by an act or omission in D.C., even if firm used infringing name and logo to advertise and promote its services at global private equity conference in D.C., absent allegations that firm sold its services at the conference or that owner and licensee did a substantial part of their business in D.C. *Citadel Inv. Group, Citadel Inv. Group, L.L.C. v. Citadel Capital Co.*, 699 F.Supp.2d 303, 2010 U.S. Dist. LEXIS 31403 (2010).

Under District of Columbia law, allegation that customer's resident employees gave non-resident competitor's employees access to plaintiff's trade secrets was sufficient to establish personal jurisdiction over competitor, in action for conspiracy to misappropriate trade secrets, even if trade secrets were actually retrieved by competitor from customer's out-of-state computer servers. *DSMC, Inc. v. Convera Corp.*, 273 F.Supp.2d 14, 2002 U.S. Dist. LEXIS 26807 (2002).

Under "causing tortious injury" clause of District of Columbia's long-arm statute, New York charitable organization was subject to personal jurisdiction in District in plaintiff charitable organization's action for trademark infringement; advertisement was placed in District newspaper inviting readers to donate funds to defendant, and defendant had Internet home page that solicited donations and provided toll-free telephone number for donors, and thus any trademark confusion was likely to occur in District. D.C. Code 1981, § 13-423(a)(4). *Heroes, Inc. v. Heroes Found.*, 958 F. Supp. 1, 1996 U.S. Dist. LEXIS 20660 (1996).

Food distributor was "transacting business" in District of Columbia within meaning of District of Columbia long-arm statute by selling Korean food products to at least one customer in district, amount to 3.6% of its total sales, permitting exercise of personal jurisdiction over distributor in competitor's trademark and trade dress infringement action. D.C. Code 1981, § 13-423(a)(1). *Rhee Bros. v. Seoul Shik Poom, Inc.*, 869 F. Supp. 31, 1994 U.S. Dist. LEXIS 19580 (1994).

Marital relationships.

Fact that former wife and her father entered into agreement which was involved in litigation was insufficient contact to justify exertion of jurisdiction over father's executor under District of Columbia long-arm statute without indication that agreement was signed or negotiated in District of Columbia, since fact that one party was resident of forum state was insufficient basis for asserting jurisdiction over other.

D.C. Code 1973, § 13-423(a), (a)(3, 4). *Willis v. Willis*, 655 F.2d 1333, 1981 U.S. App. LEXIS 11980 (C.A.D.C. 1981).

Plaintiff may maintain an action for divorce even though Superior Court has no personal jurisdiction over the defendant where the plaintiff is entitled to bring such an action by being a District of Columbia resident for at least six months before filing his complaint. *Oler v. Oler*, 118 WLR 541 (Super. Ct. 1990).

Minimum contacts.

— In general.

Certification of question to District of Columbia Court of Appeals was warranted, as to whether petition sent to federal government agency located in District provided basis for establishing personal jurisdiction over petitioner when plaintiff has alleged that petition fraudulently induced unwarranted government action against it, since scope of “government contacts” exception to District’s personal jurisdiction statute was uncertain and resolution of question could affect numerous individuals and corporations that petitioned the federal government. *Companhia Brasileira Carburto De Calcio v. Applied Indus. Materials Corp.*, 640 F.3d 369, 2011 U.S. App. LEXIS 7734 (C.A.D.C. 2011).

Contacts of Chief Counsel of Disciplinary Board of New Mexico Supreme Court with District of Columbia were insufficient to support exercise of jurisdiction over her in United States’ action to enjoin her from taking further disciplinary action against attorney licensed in New Mexico based on activities while employed as Assistant United States Attorney in District of Columbia; relationship between attorney and Board predated attorney’s unilateral decision to practice law in District of Columbia, attorney’s continuing obligation to report his whereabouts to New Mexico Supreme Court and to pay his annual dues was undertaken before his unilateral decision to move, and Chief Counsel’s letter to District-based Justice Department official stating her refusal to withdraw disciplinary charges did not evidence a substantial connection with forum state. U.S. Const. Amend. 5; D.C. Code 1981, § 13-423. *United States v. Ferrara*, 54 F.3d 825, 1995 U.S. App. LEXIS 11789 (C.A.D.C. 1995).

For-profit vocational college’s contacts with District of Columbia consisted solely in participating in federal financial aid programs through the Department of Education, and therefore, were insufficient pursuant to government contacts exception to District of Columbia long-arm statute to establish personal jurisdiction in District over college in students’ putative class action alleging violations of the Equal Credit Opportunity Act, Title VI, and the Virginia Consumer Protection Act; college only had

contact with District in order to deal with a federal instrumentality and had no other contacts. *Morgan v. Richmond School of Health and Technology, Inc.*, 2012 WL 1476062 (2012).

District of Columbia court lacked personal jurisdiction over nonresident borrower in lender’s action to recover money due under promissory note, even if borrower had made payments to lender across interstate lines while lender resided in District of Columbia, where borrower had never been domiciled in District of Columbia, borrower’s principal place of business had not been in District of Columbia, and lender had not loaned money to borrower within District of Columbia, nothing in promissory notes referred to District of Columbia, and promissory notes contained California and Texas addresses for parties and stated that notes were to be governed and interpreted under laws of State of Texas. *Atwal v. Myer*, 841 F.Supp.2d 364, 2012 U.S. Dist. LEXIS 11539 (2012).

Coworker and owner of Florida job corps center (JCC), providing education and career technical training program administered by United States Department of Labor, lacked minimum contacts with District of Columbia (D.C.), as necessary to satisfy due process requirements for exercise of specific personal jurisdiction over coworker and owner, under D.C.’s long-arm statute, in employee’s action claiming sexual harassment in violation of Title VII and violation of Equal Protection Clause, where coworker resided and worked for JCC in Florida and had only visited D.C. once over 10 years ago, alleged sexual harassment in Florida JCC did not arise from visit to D.C., and owner was Ohio citizen, with offices in Ohio, and had no contacts with D.C. at all. *Bond v. ATSI/Jacksonville Job Corps Ctr.*, 811 F.Supp.2d 417, 2011 U.S. Dist. LEXIS 106210 (2011).

Employees of a federal government agency did not fall within the scope of the District of Columbia long-arm statute for personal jurisdiction in inmate’s Bivens action, where employees had not transacted business, contracted to supply services or caused tortious injury in the District of Columbia. *Baez v. Connelly*, 734 F.Supp.2d 54, 2010 U.S. Dist. LEXIS 89365 (2010).

Vermont hospital did not have requisite minimum contacts with the District of Columbia to make it subject to a lawsuit in the District of Columbia, consistent with due process, since hospital’s only contact with the District of Columbia, its report to National Practitioners Data Bank of its decision to suspend his hospital privileges because of concerns about his fitness to practice medicine, was excluded from minimum contacts analysis as a contact with the federal government. *Agee v. Sebelius*, 668 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 101497 (2009).

Portion of personal jurisdiction analysis requiring district court to determine whether jurisdiction satisfies due process requirements turns on whether a defendant's "minimum contacts" with District of Columbia establish that maintenance of suit does not offend traditional notions of fair play and substantial justice. *Ballard v. Holinka*, 601 F.Supp.2d 110, 2009 U.S. Dist. LEXIS 15759 (2009).

Traditional notions of fair play and substantial justice counseled against exercising personal jurisdiction over commercial truck driver under District of Columbia's long-arm statute in suit seeking damages for personal injuries resulting when driver's truck was stolen outside his Maryland home and driven by thief into District of Columbia where it crashed into plaintiffs' vehicle; driver, who drove truck to and from Maryland and the District of Columbia to deliver furniture for his employers but did not provide any financing for his employers, did not form any corporate entities, and did not make any business decisions, did not purposely avail himself of the privilege of conducting activities in the forum such that he could anticipate being hauled into court there. *Bailey v. J&B Trucking Servs.*, 577 F.Supp.2d 116, 2008 U.S. Dist. LEXIS 68241 (2008).

Condemnation by City of Newark, New Jersey, of property within its city limits did not give rise to any contacts with District of Columbia that could support assertion of personal jurisdiction under District's long-arm statute. *Black v. City of Newark*, 535 F.Supp.2d 163, 2008 U.S. Dist. LEXIS 17677 (2008).

For purposes of establishing jurisdiction under the District of Columbia long-arm statute, it is contacts with the District, and not the nation as a whole, that are critical. *Heller v. Nicholas Applegate Capital Mgmt., LLC*, 498 F.Supp.2d 100, 2007 U.S. Dist. LEXIS 54091 (2007).

A single act, so long as it creates a substantial connection with forum, is sufficient for exercise of personal jurisdiction under District of Columbia long-arm statute. *Heller v. Nicholas Applegate Capital Mgmt., LLC*, 498 F.Supp.2d 100, 2007 U.S. Dist. LEXIS 54091 (2007).

Personal jurisdiction under District of Columbia long-arm statute is proper where actions by a defendant himself establishes a substantial connection with the forum. *Heller v. Nicholas Applegate Capital Mgmt., LLC*, 498 F.Supp.2d 100, 2007 U.S. Dist. LEXIS 54091 (2007).

University's government relations and lobbying connections to the District of Columbia do not form a basis for asserting personal jurisdiction under long-arm statute; the government contacts exception to the transacting business provision of a long-arm statute allows for petitioning the government and for the redress of

grievances. *Richards v. Duke Univ.*, 480 F.Supp.2d 222, 2007 U.S. Dist. LEXIS 22864 (2007), affirmed by 2007 U.S. App. LEXIS 30275 (D.C. Cir. Aug. 27, 2007).

Under District of Columbia law, in determining whether a court can exercise personal jurisdiction over defendants under its long-arm statute, the question is whether defendants purposefully established minimum contacts with the District of Columbia such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *FC Inv. Group LC v. Lichtenstein*, 441 F.Supp.2d 3, 2006 U.S. Dist. LEXIS 49936 (2006).

Contacts of out-of-state defendant law firms and companies with District of Columbia did not relate to factual circumstances giving rise to suit, which alleged that defendants participated in litigation fraud in Colorado-based suits, as required to exercise personal jurisdiction over them, even assuming that most of alleged fraud occurred through interstate mail, absent showing that any of it occurred in District of Columbia. *Sieverding v. ABA*, 439 F.Supp.2d 111, 2006 U.S. Dist. LEXIS 47981 (2006).

Florida accounting firm was not subject to personal jurisdiction in the District of Columbia under the District's long-arm statute by virtue of its employees' attendance at continuing education programs, seminars, and conferences in the District, absent evidence that the trips involved doing or soliciting business, or that they were regular in nature or otherwise exemplified a persistent course of conduct. *Burman v. Phoenix Worldwide Indus.*, 437 F.Supp.2d 142, 2006 U.S. Dist. LEXIS 46070 (2006).

District court lacked personal jurisdiction over vice president of human resources for hotel chain in Title VII action brought by hotel employee, given that vice president lived and worked in Canada and employee, whose only reference to vice president in complaint concerned letter that he sent to vice president's office in Canada, alleged no facts that would bring vice president within reach of District of Columbia's long-arm statute. *Rogers v. Wash. Fairmont Hotel*, 404 F.Supp.2d 56, 2005 U.S. Dist. LEXIS 17940 (2005).

Federal district court sitting in District of Columbia did not have specific personal jurisdiction, under District long-arm statute, over group of interrelated entities engaged in Peruvian mining operations, in suit brought by caterer alleging wrongful interference with its business in Peru; required minimum contacts between group and District of Columbia were not established through negotiations in District with District based bank, producing loan funds presumably used to pay catering charges. *AGS Int'l Servs. S.A. v. Newmont USA Ltd.*, 346

F.Supp.2d 64, 2004 U.S. Dist. LEXIS 23061 (2004).

State Administrator of Maryland State Board of Election was not subject to personal jurisdiction in District of Columbia in action alleging violation of National Voter Registration Act as result of Administrator's failure to designate Washington Metropolitan Area Transit Authority (WMATA) disability office as voter registration site, absent allegation that Administrator had any personal or official contacts with District, or that alleged violation arose from her official contacts with District. *Nat'l Coalition for Students with Disabilities v. Miller*, 298 F.Supp.2d 16, 2002 U.S. Dist. LEXIS 27011 (2002).

In order to satisfy Due Process Clause's requirement on "minimum contacts" for exercise of personal jurisdiction, defendant's conduct and connection with forum state must be such that he should reasonably anticipate being hauled into court there. *Ulico Cas. Co. v. Fleet Nat'l Bank*, 257 F.Supp.2d 142, 2003 U.S. Dist. LEXIS 5757 (2003).

Due Process, in the context of personal jurisdiction, is satisfied where a defendant has minimum contacts with the forum jurisdiction such that the exercise of personal jurisdiction will not offend traditional notions of fair play and substantial justice. *Johnson-Tanner v. First Cash Fin. Servs.*, 239 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 335 (2003).

Minimum contacts, for the purpose of personal jurisdiction under the Due Process Clause, are established where a defendant purposefully avails itself of the privilege of conducting activities within the forum jurisdiction such that the defendant should reasonably anticipate being hauled into court there. *Johnson-Tanner v. First Cash Fin. Servs.*, 239 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 335 (2003).

To determine whether the exercise of personal jurisdiction over nonresident defendant satisfies traditional notions of fair play and substantial justice, and thus comports with due process, court must consider two issues: whether defendant has minimum contacts with forum, and whether exercising jurisdiction would be reasonable. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, *RICO Bus. Disp. Guide* P10013 (D.D.C. 2001).

Even when the literal terms of the District of Columbia's long-arm statute have been satisfied, plaintiff must show "minimum contacts" between defendant and forum so that maintenance of the suit does not offend traditional notions of fair play and substantial justice. *U.S.C. Const.Amends. 5, 14*; *D.C. Code* 1981, § 13-423(a). *Marshall v. Labor & Indus.*, 89 F.Supp.2d 4, 2000 U.S. Dist. LEXIS 6125 (2000).

District of Columbia federal district court lacked personal jurisdiction over nonresident government entities and officials, in action by minority contractor based on their failure to award him construction contract, where contractor failed to allege that any defendant had contacts with forum. *D.C. Code* 1981, § 13-423(a). *Jones v. City of Buffalo*, 901 F. Supp. 19, 1995 U.S. Dist. LEXIS 15412 (1995), affirmed by 1996 U.S. App. LEXIS 10787 (D.C. Cir. Mar. 12, 1996).

Individual defendants who did not reside or work in District of Columbia were not subject to long-arm jurisdiction in District. *D.C. Code* 1981, § 13-423. *Martin v. Coca-Cola Co.*, 785 F. Supp. 3, 1992 U.S. Dist. LEXIS 1785 (1992).

District court could not exercise personal jurisdiction over administrator of Maryland Department of Transportation under District of Columbia's long-arm statute in action challenging planned widening of Maryland interstate highway, on basis that project would have impact upon residents of District, that Maryland officials had met with federal officials or that department had contracted with firms in District to perform aspects of the project. *D.C. Code* 1981, § 13-423. *Coalition on Sensible Transp., Inc. v. Dole*, 631 F. Supp. 1382, 1986 U.S. Dist. LEXIS 27271 (1986).

District of Columbia long-arm statute did not warrant exercise of in personam jurisdiction over Connecticut resident who had virtually no contact with the District of Columbia. *D.C. Code* 1981, § 13-423. *Martin-Trigona v. Shiff*, 600 F. Supp. 1184, 1984 U.S. Dist. LEXIS 21238 (1984).

Where there was no evidence that any of four individual nonresident defendants ever went to or solicited business in District of Columbia, or that any of them engaged in any other persistent course of conduct there, nor was there any evidence that any of individual defendants obtained substantial revenue from goods sold or services provided in District of Columbia, federal district court in District of Columbia could not permissibly exercise personal jurisdiction over defendants under District of Columbia long-arm statute. *D.C. Code* 1981, § 13-423. *Trager v. Wallace Berrie & Co.*, 593 F. Supp. 223, 1984 U.S. Dist. LEXIS 24083 (1984).

Telephone calls made by defendant in Maryland to recipients in District of Columbia were not by themselves sufficient to confer personal jurisdiction, pursuant to long-arm statute, over defendant in plaintiff's defamation action in the District of Columbia, even if defendant's alleged defamatory statements caused injury inside District, absent any other contacts by defendant with District. *Charlton v. Mond*, 987 A.2d 436, 2010 D.C. App. LEXIS 8 (2010).

Under the long-arm statute, the defendant must have minimum contacts with the forum so that exercising personal jurisdiction over it

would not offend traditional notions of fair play and substantial justice. *Gonzalez v. Internacional de Elevadores, S.A.*, 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

California broker of truck transportation which did not solicit produce buyer's business in District of Columbia, which was contacted in California, which had principal place of business in California, and which sent mailgram to buyer in District of Columbia to collect overdue accounts for prior transactions not necessarily involving broker's solicitation in District of Columbia played role beginning and ending in California, did not seek benefits or protections of District of Columbia's laws, and, therefore, did not have minimum contacts sufficient to justify personal jurisdiction by District of Columbia court. D.C. Code 1981, § 13-423; U.S. Const. Amends. 5, 14. *Sol Salins, Inc. v. Sure Way Refrigerated Truck Transp. Brokers, Inc.*, 510 A.2d 1032, 1986 D.C. App. LEXIS 346 (1986).

For purposes of minimum contacts test, "contacts" are those activities of a party which form a nexus between it and the forum state. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

In determining in personam jurisdiction over nonresident defendant, minimum contacts test is not susceptible of mechanical application and facts of each case must be weighed to determine whether the requisite affiliating circumstances are present. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

Columbia University, a nonprofit corporation organized under the laws of the state of New York, was not subject to personal jurisdiction under District of Columbia long-arm statute where it did not maintain an office in the District, the only business which it transacted there consisted of soliciting research grants and other funds from the federal government, and plaintiff's claim was unrelated to those activities. D.C. Code 1981, § 13-423(a)(1), (b). *Beachboard v. Trustees of Columbia University*, 475 A.2d 398, 1984 D.C. App. LEXIS 399 (1984).

Where the acts of which the owner complained were the erroneous survey and the resulting construction of a cabin in the wrong place, both of which occurred entirely in Virginia, and the only consequence in the District of Columbia of which the owner complained was injury to his bank account, contractor, which was a Virginia corporation, was not "transacting any business" in the District of Columbia when he contracted with owner, then living in the District of Columbia, and thus was not subject to the personal jurisdiction of a court in the District of Columbia. D.C. Code 1981, § 13-423(a), (a)(1), (b). *Cockrell v. Cumberland Corp.*, 458 A.2d 716, 1983 D.C. App. LEXIS 333 (1983).

With respect to transacting any business within long-arm statute, proper application of minimum contacts formula requires consideration not only of whether nonresident defendant has sufficient contacts with forum, but also of whether those contacts are voluntary and deliberate, rather than fortuitous, and relationship among defendant, forum and litigation is central concern of inquiry into personal jurisdiction. (Per Curiam opinion joined by four Judges with one Judge concurring in result.) D.C. Code 1973, §§ 13-423, 13-423(a)(1); U.S. Const. Amends. 5, 14. *Mouzavires v. Baxter*, 434 A.2d 988, 1981 D.C. App. LEXIS 347 (1981), writ of certiorari denied by 455 U.S. 1006, 102 S. Ct. 1643, 71 L. Ed. 2d 875, 1982 U.S. LEXIS 1293, 50 U.S.L.W. 3713 (1982).

The only nexus required by the long-arm statute between the District of Columbia and the nonresident defendant is some affirmative act by which the defendant brings itself within the jurisdiction and establishes minimum contacts. D.C.C.E § 13-423; U.S. Const. Amend. 14. *Berwyn Fuel, Inc. v. Hogan*, 399 A.2d 79, 1979 D.C. App. LEXIS 311 (1979).

All that is required to exercise personal jurisdiction over nonresident defendant is some affirmative act by which defendant brings itself within jurisdiction and establishes minimum contact. U.S. Const. Amend. 14; D.C. Code § 13-423(a)(1). *Cohane v. Arpeja-California, Inc.*, 385 A.2d 153, 1978 D.C. App. LEXIS 448 (1978), writ of certiorari denied by 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651, 1978 U.S. LEXIS 3936 (1978).

Superior Court could attribute trust settlors' contacts with the District of Columbia to the trustee of the settlors' irrevocable trusts, which were created under Delaware law, and exercise personal jurisdiction over the trustee, which was a Delaware entity and was served with a complaint alleging that the settlors engaged in a conspiracy to defraud, pursuant to the District of Columbia's long-arm statute if the plaintiffs could show that the settlors were alter egos of the trusts or that either settlor was the alter ego of the other's trust, so long as the settlors' minimum contacts with the District of Columbia satisfied due process; if a trust was the alter ego of a settlor so that they were in effect the same entities, it would not offend traditional notions of fair play and substantial justice or impose an unreasonable burden to exercise jurisdiction over the trustee, which would have allowed that to happen, based on the settlor's minimum contacts with the jurisdiction. *Matijkiw, et al. v. Strauss, et al.*, 139 WLR 1345 (Super. Ct. 2011).

Factors bearing on the adequacy of a defendant's acts and its "minimum contacts" with the trial forum in affecting the determination of whether the forum has personal jurisdiction; include (1) the reasonableness of requiring a

defendant to defend a suit in the forum where it is initiated, (2) the foreseeability of injury to the plaintiff as a result of actions or consequences of actions of the defendant in forum, (3) whether the defendant's activities upon which plaintiff's lawsuit is grounded caused a consequence in the forum state, (4) whether there was an act by the defendant by which it purposely availed itself of the privilege of conducting activities in the forum state, (5) whether the defendant's contacts with the forum are of a quality and nature to manifest a deliberate and voluntary association with the forum, (6) whether the defendant's contacts with the forum are related to the transaction upon which plaintiff's lawsuit is grounded, and (7) whether the defendant's contacts with the forum were such that it could reasonably anticipate being hauled into court there. *Daniels v. Kanof*, 116 WLR 2053 (Super. Ct. 1988).

— **Persistent course of conduct, minimum contacts.**

Non-resident defendant did not have a regular or persistent course of conduct in the District of Columbia, as required for District of Columbia long-arm statute to confer personal jurisdiction over defendant in suit alleging breach of contract and tortious interference with contract; defendant had no personal business contacts with the District and had never transacted any personal business within it, his only contacts with the District were a four-day trip that he took with his family as a tourist and attendance at two conferences on behalf of his employer, neither of which related to the allegations contained in the lawsuit. *Dean v. Walker*, 756 F.Supp.2d 100, 2010 U.S. Dist. LEXIS 135962 (2010).

Alabama not-for-profit organization devoted to fighting discrimination and extremism engaged in a persistent course of conduct in the District of Columbia sufficient to establish personal jurisdiction over it, under the District of Columbia long-arm statute, in defamation case based on its publishing an article describing District resident as a revisionist historian, where it created a network of contacts in the District through its website and other means to distribute thousands of copies of its magazines and solicit millions of dollars in donations to support its operations, it sent its employees to the District for training programs and conferences, and it collected information on hate groups in the District. *Lewy v. S. Poverty Law Ctr., Inc.*, 723 F.Supp.2d 116, 2010 U.S. Dist. LEXIS 69493 (2010).

For a website to constitute a persistent course of conduct within the District of Columbia, for purposes of long-arm jurisdiction, it must meet a certain level of interactivity; at the very least, it must allow browsers to interact directly with the web site on some level. *Bible*

Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell, 578 F.Supp.2d 164, 2008 U.S. Dist. LEXIS 75441 (2008).

The mere maintenance of a website accessible to Internet users in the District of Columbia does not amount to any persistent course of conduct within the meaning of the long-arm statute. *Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell*, 578 F.Supp.2d 164, 2008 U.S. Dist. LEXIS 75441 (2008).

Members of sorority's legislative body had requisite minimum contacts with the forum such that exercise of personal jurisdiction over members in action by sorority members concerning irregularities in financial management complied with due process; the legislative sessions were held in the forum over the course of a full week, the sessions dealt with the management of the sorority, which was incorporated in the forum, and all of the named members of the legislative body voluntarily participated in the sessions. *Daley v. Alpha Kappa Alpha Sorority, Inc.*, 26 A.3d 723, 2011 D.C. App. LEXIS 505 (2011).

— **Purposeful conduct, minimum contacts.**

Egyptian private equity firm did not purposefully avail itself of privilege of conducting activities within the District of Columbia (D.C.), and thus firm was not subject to specific personal jurisdiction in D.C. in trademark infringement suit under section of D.C. long-arm statute authorizing courts to exercise jurisdiction over any person who transacted business in D.C., though firm attended global private equity conference in D.C. and served as lead sponsor and reception sponsor; conference was international in scope and was not directed specifically at D.C. residents, and there was no evidence participation in conference resulted in sales of firm's services. *Citadel Inv. Group, L.L.C. v. Citadel Capital Co.*, 699 F.Supp.2d 303, 2010 U.S. Dist. LEXIS 31403 (2010).

Netherlands law firm's entering into contract to provide legal services to Delaware corporation with principal place of business in District did not by itself establish minimum contacts or constitute purposeful availment required to exercise personal jurisdiction over firm on the basis of transacting business in corporation's action in federal district court in District of Columbia alleging legal malpractice. *Exponential Biotherapies, Inc. v. Houthoff Buruma N.V.*, 638 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 65763 (2009).

If exception to fiduciary shield doctrine applied, mortgagee's nonresident president had purposeful minimum contacts with forum, based on mortgagee's pattern of accepting applications from and making loans to forum residents that was attributable to president, sufficient for exercise of jurisdiction over pres-

ident, under Due Process Clause and District of Columbia's long-arm statute, that would not offend traditional notions of fair play and substantial justice, in Fair Housing Act suit alleging that mortgagee discriminated against Native Americans, people with disabilities, and African Americans. *Nat'l Cmty. Reinvestment Coalition v. Novastar Fin., Inc.*, 604 F.Supp.2d 26, 2009 U.S. Dist. LEXIS 25932 (2009).

Under District of Columbia law, personal jurisdiction exists when defendant has purposely established minimum contacts with forum state and when exercise of jurisdiction comports with traditional notions of fair play and substantial justice. *Ventura v. Bebo Foods, Inc.*, 595 F.Supp.2d 77, 2009 U.S. Dist. LEXIS 7039 (2009).

The Court's minimum contacts inquiry, with respect to exercise of personal jurisdiction over a nonresident defendant under District of Columbia's long-arm statute, should be guided by a search for meaningful acts reflecting purposeful affirmative activity within the District of Columbia. *Quality Air Servs., L.L.C. v. Milwaukee Valve Co.*, 567 F.Supp.2d 96, 2008 U.S. Dist. LEXIS 55431 (2008).

Ohio newspaper and its reporter that published article on newspaper's website referring to plaintiff as a pedophile did not have minimum contacts with the District of Columbia such that the maintenance of plaintiff's defamation action would offend traditional notions of fair play and substantial justice; article was written for an Ohio publication that is distributed almost exclusively in Ohio, and newspaper and reporter did not purposefully availed themselves of the privilege of doing business in the District. *Copeland-Jackson v. Oslin*, 555 F.Supp.2d 213, 2008 U.S. Dist. LEXIS 41615 (2008).

By condemning property within its city limits, City of Newark, New Jersey, did not purposefully avail itself of privilege of conducting activities within District of Columbia, as required to assert personal jurisdiction over City under District of Columbia long-arm statute consonant with due process. *Black v. City of Newark*, 535 F.Supp.2d 163, 2008 U.S. Dist. LEXIS 17677 (2008).

Purposeful availment requirement, for purposes of District of Columbia long-arm jurisdiction, ensures that personal jurisdiction shall not arise solely as a result of random, fortuitous, or attenuated contacts. *Heller v. Nicholas Applegate Capital Mgmt., LLC*, 498 F.Supp.2d 100, 2007 U.S. Dist. LEXIS 54091 (2007).

For an exercise of personal jurisdiction under District of Columbia long-arm statute, it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the District, thus invoking the benefits and protections of its laws. *Heller v. Nicholas*

Applegate Capital Mgmt., LLC, 498 F.Supp.2d 100, 2007 U.S. Dist. LEXIS 54091 (2007).

University's recruiting activities to meet with students in the District of Columbia and the residence of some students and adjunct faculty in the District of Columbia do not separately, or in the aggregate, constitute regular business, persistent conduct, or receipt of substantial revenue from the District of Columbia as required to assert personal jurisdiction under its long-arm statute. *Richards v. Duke Univ.*, 480 F.Supp.2d 222, 2007 U.S. Dist. LEXIS 22864 (2007), affirmed by 2007 U.S. App. LEXIS 30275 (D.C. Cir. Aug. 27, 2007).

Under District of Columbia law, contacts with district by director of corporation were purposefully directed at investment company, which was located in district, and therefore exercise of personal jurisdiction over director of corporation was consistent with due process in investment company's action for fraud against director of corporation and his law firm alleging that they operated a sham currency trading scheme; director spoke with investor by telephone numerous times and sent faxes, which allegedly communicated false information about the corporation, its investments, and the return of investment company's funds, at least some of the calls and faxes were initiated by director, director allegedly benefited personally from contacts, district had interest in adjudicating the suit because investment company operated in district, and adjudicating suit in district was efficient and did not interfere with any fundamental substantive social policy. *FC Inv. Group LC v. Lichtenstein*, 441 F.Supp.2d 3, 2006 U.S. Dist. LEXIS 49936 (2006).

For there to be personal jurisdiction under District of Columbia's long-arm statute, plaintiff must allege some specific facts evidencing purposeful activity by defendants in District of Columbia by which they invoked benefits and protections of its laws and specific acts connecting defendants with forum. *Robinson v. Ashcroft*, 357 F.Supp.2d 146, 2004 U.S. Dist. LEXIS 27142 (2004).

Officials of foreign nation purposefully established minimum contacts, justifying exercise of personal jurisdiction under transacting business or contracting to supply services provisions of District of Columbia long-arm statute and under due process, by contracting to pay for medical services provided within District, paying money between two District bank accounts and attempting to influence District doctor to alter medical report, and thus, jurisdiction existed over officials in suit such that officials fraudulently induced American family to remain silent about royal family member's involvement in accident that caused child's injuries. U.S. Const. Amends. 5, 14; D.C. Code 1981, § 13-423. *Jungquist v. Sheikh Sultan Bin Khalifa Al Nahyan*, 940 F. Supp. 312, 1996 U.S. Dist.

LEXIS 14089 (1996), reversed in part by 115 F.3d 1020, 325 U.S. App. D.C. 117, 1997 U.S. App. LEXIS 14472, 1998 A.M.C. 1517 (1997).

Qualitative rather than quantitative nature of defendant's contacts are to be considered when determining whether District of Columbia's long-arm statute authorizes exercise of personal jurisdiction over nonresident defendant. D.C. Code 1981, § 13-423(a)(1). *Schwartz v. CDI Japan*, 938 F. Supp. 1, 1996 U.S. Dist. LEXIS 8866 (1996).

While long-arm statute is interpreted broadly, plaintiff must allege some specific facts evidencing purposeful activity by defendants in District of Columbia by which they invoked benefits and protection of its laws, and specific acts connecting defendants with forum. D.C. Code 1981, § 13-423. *Cellutech, Inc. v. Centennial Cellular Corp.*, 871 F. Supp. 46, 1994 U.S. Dist. LEXIS 19588 (1994).

In order to assert jurisdiction over a foreign defendant under the long-arm statute, the defendant must have purposefully directed its activities at residents of the forum; the nonresident defendant's conduct and connection with the forum state must be such that he should reasonably anticipate being hauled into court there. *Gonzalez v. Internacional de Elevadores, S.A.*, 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

Business contacts between a nonresident defendant and the forum must be voluntary and deliberate, rather than fortuitous and accidental, in order to provide a basis for the exercise of personal jurisdiction over the defendant consistent with due process. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

A defendant's awareness that the stream of commerce may or will sweep the product into the forum state does not convert the mere act of placing the product into the stream into an act which is purposefully directed toward the forum state and is a permissible basis for exercising personal jurisdiction consistent with the due process clause. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

Under due process clause, the minimum contacts principle for court's exercise of personal jurisdiction over nonresident defendant requires court to examine the quality and nature of defendant's contacts with District of Columbia and whether those contacts are voluntary and deliberate or only random, fortuitous, tenuous, and accidental. U.S. Const. Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

Long-arm statute requires some affirmative act by defendant which brings defendant within the jurisdiction and establishes minimum contact. D.C. Code 1981, § 13-423. *Ever-*

ett v. Nissan Motor Corp., 628 A.2d 106, 1993 D.C. App. LEXIS 171 (1993).

Critical issue in any case involving in personam jurisdiction over nonresident defendant is whether defendant's conduct and connection with forum state are such that he should reasonably anticipate being hauled into court there. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

Minimum contacts with forum state such that maintenance of suit does not offend traditional notions of fair play and substantial justice should cause a nonresident defendant to reasonably anticipate being hauled into court there. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

For in personam jurisdiction over nonresident defendant to exist in cases where cause of action does not arise in forum state, defendant's activities must be both continuous and substantial. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

Some affirmative act by defendant is necessary to bring himself within court's jurisdiction and to establish minimum contacts necessary to meet "transacting-any-business" subsection of District of Columbia's long-arm statute. D.C. Code 1981, § 13-423. *Hummel v. Koehler*, 458 A.2d 1187, 1983 D.C. App. LEXIS 340 (1983).

District Court lacked personal jurisdiction over non-resident cable services provider, absent showing that provider performed actions within District of Columbia sufficient to bring defendant under jurisdiction of District. *Tall v. Credit Prot. Ass'n*, 439 Fed.Appx. 1, 2011 U.S. App. LEXIS 19292 (C.A.D.C. 2011).

— Third party actions, minimum contacts.

Unilateral activity of another party or a third person does not give rise to personal jurisdiction under District of Columbia long-arm statute. *Heller v. Nicholas Applegate Capital Mgmt., LLC*, 498 F.Supp.2d 100, 2007 U.S. Dist. LEXIS 54091 (2007).

Municipal entities.

No claim upon which relief could be granted was stated when claimant sued city mayor and council president for failing to fulfill campaign promise that they would work to curb racially-based harassment by city police officers. *Moore v. Motz*, 437 F.Supp.2d 88, 2006 U.S. Dist. LEXIS 41950 (2006).

Parents and children.

In custody dispute, failure to apply policy and provisions of Uniform Child Custody Jurisdiction Act, which is designed to deter child snatching by, inter alia, substantially limiting power of courts to legitimize de facto custody possession by parents who take children across state lines for purpose of obtaining initial custody determination, in advance of legislative adoption, was not abuse of discretion, and

child's physical presence, though resulting from father's deception, was sufficient to warrant exercise of jurisdiction. D.C. Code 1981, §§ 13-336, 13-423, 16-4501 et seq. *Albergottie v. James*, 470 A.2d 266, 1983 D.C. App. LEXIS 537 (1983).

If applied with eye towards its underlying purpose, the Uniform Child Custody and Jurisdiction Act will generally deny access to courts to parent or another engaged in wrongful or reprehensible conduct in order to secure de facto custody of child, and Act would be applicable where parent removed child to obtain initial custody determination and hence did not violate terms of existing decree. D.C. Code 1981, §§ 13-336, 13-423, 16-4501 et seq. *Albergottie v. James*, 470 A.2d 266, 1983 D.C. App. LEXIS 537 (1983).

In a paternity action, where the only connection with the District was the respondent's employment, but the pregnancy did not emanate from any such relationship, court lacked personal subject matter jurisdiction. *T.M.P. v. G.C.M.*, 124 WLR 233 (Super. Ct. 1995).

Persons.

State is not a "person" within meaning of District of Columbia's long-arm statute, which provides for jurisdiction over nonresident "person" who transacts business there. D.C. Code 1981, § 13-423(a)(1). *United States v. Ferrara*, 54 F.3d 825, 1995 U.S. App. LEXIS 11789 (C.A.D.C. 1995).

Presumptions and burden of proof.

A plaintiff bears the burden of establishing that personal jurisdiction under District of Columbia's long-arm statute exists by demonstrating a factual basis for exercise of such jurisdiction over the defendant. *Metcalf v. Fed. Bureau of Prisons*, 530 F.Supp.2d 131, 2008 U.S. Dist. LEXIS 579 (2008).

Plaintiff bears the burden of establishing that personal jurisdiction under the long-arm statute exists by demonstrating a factual basis for the exercise of such jurisdiction over the defendant. *Simpson v. Fed. Bureau of Prisons*, 496 F.Supp.2d 187, 2007 U.S. Dist. LEXIS 55745 (2007).

In order to meet its burden of proving the existence of specific jurisdiction, under the District of Columbia long-arm statute, a plaintiff must demonstrate that (1) the defendant transacted business in the District, (2) that the cause of action arises from the business transacted in the District, and (3) that the defendant had minimum contacts with the District such that the court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. *AGS Int'l Servs. S.A. v. Newmont USA Ltd.*, 346 F.Supp.2d 64, 2004 U.S. Dist. LEXIS 23061 (2004).

To establish personal jurisdiction under the "transacting business" section of the District of Columbia long-arm statute, plaintiffs must demonstrate that (1) the defendant transacted business in the District; (2) the claim arose from the business transacted in the District; (3) the defendant had minimum contacts with the District; and (4) the Court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. *Jung v. Ass'n of Am. Med. Colleges*, 300 F.Supp.2d 119, 2004 U.S. Dist. LEXIS 1826 (2004).

The plaintiff bears the burden of proving a prima facie case of personal jurisdiction by alleging specific acts linking a defendant with the forum. *Johnson-Tanner v. First Cash Fin. Servs.*, 239 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 335 (2003).

In deciding whether a basis for personal jurisdiction exists, factual discrepancies in the record must be resolved in the plaintiff's favor. *Johnson-Tanner v. First Cash Fin. Servs.*, 239 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 335 (2003).

In order to establish personal jurisdiction over an nonresident defendant under the District of Columbia's long-arm statute and pursuant to due process requirements, the plaintiff must allege nonconclusory facts that establish a prima facie showing of personal jurisdiction. *Manifold v. Wolf Coach, Inc.*, 231 F.Supp.2d 58, 2002 U.S. Dist. LEXIS 21911 (2002).

Under District of Columbia long-arm statute, plaintiffs have burden of demonstrating factual basis for exercise of personal jurisdiction over defendant; in attempting to satisfy this burden, plaintiffs may not rest on bare allegations or conclusory statements alone and must make at least prima facie showing. D.C. Code 1981, § 13-423. *Freiman v. Lazur*, 925 F. Supp. 14, 1996 U.S. Dist. LEXIS 6412 (1996).

In general, plaintiff seeking to establish personal jurisdiction over nonresident defendant in District of Columbia federal district court has burden of showing that all requirements of District of Columbia long-arm statute have been met. D.C. Code 1981, § 13-423(a). *Jones v. City of Buffalo*, 901 F. Supp. 19, 1995 U.S. Dist. LEXIS 15412 (1995), affirmed by 1996 U.S. App. LEXIS 10787 (D.C. Cir. Mar. 12, 1996).

Under District of Columbia long-arm statute, plaintiff has burden of establishing that personal jurisdiction exists by demonstrating factual basis for exercise of such jurisdiction over defendant. D.C. Code 1981, § 13-423(a)(1, 2), (b). *COMSAT Corp. v. Finshipyards S.A.M.*, 900 F. Supp. 515, 1995 U.S. Dist. LEXIS 14701 (1995).

Under District of Columbia long-arm statute, plaintiff has burden of establishing factual basis for exercise of personal jurisdiction over defendant. D.C. Code 1981, § 13-423. *Cellutech, Inc. v. Centennial Cellular Corp.*,

871 F. Supp. 46, 1994 U.S. Dist. LEXIS 19588 (1994).

Burden of establishing basis for exercise of jurisdiction is on plaintiffs. *Blair v. Norwegian Caribbean Lines, A/S*, 622 F. Supp. 21, 1985 U.S. Dist. LEXIS 22354 (1985).

Party seeking to invoke federal jurisdiction has burden of establishing that it exists but plaintiff need only make prima facie showing of jurisdictional facts to prevail. D.C. Code 1973, § 13-423; U.S. Const. Amend. 14. *Mitchell Energy Corp. v. Mary Helen Coal Co.*, 524 F. Supp. 558, 1981 U.S. Dist. LEXIS 9910 (1981).

Plaintiff bears the burden of establishing that the trial court had personal jurisdiction over the defendant. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

Questions of fact.

Whether plaintiff was agent of Japanese corporation when negotiating contract for creation and sale of computer program, subjecting Japanese corporation to personal jurisdiction under transacting business provision of District of Columbia long-arm statute in breach of contract suit, was fact question precluding summary judgment. D.C. Code 1981, § 13-423(a)(1); Fed.R.Civ.Proc. Rule 56, 18 U.S.C. *Schwartz v. CDI Japan*, 938 F. Supp. 1, 1996 U.S. Dist. LEXIS 8866 (1996).

Factual issues whether Ohio business trust in some way "purposefully directed" its activities at resident of District of Columbia or, more specifically, whether it solicited relationship with District of Columbia real estate broker and whether there was contract between parties concerning sale of Tennessee property and, if so, its terms and parties' actual course of dealings were genuine factual issues precluding dismissal, on ground of lack of personal jurisdiction, of action by broker against trust. D.C. Code 1981, § 13-423(a)(1). *Reiman v. First Union Real Estate Equity & Mortg. Inv.*, 614 F. Supp. 255, 1985 U.S. Dist. LEXIS 17782 (1985).

Qui tam actions.

There was personal jurisdiction, in District of Columbia, consistent with due process, in suit by representative of construction company against son of company's principal, claiming tortious interference with prospective contract arrangement under which representative would have served as exclusive case manager in qui tam action against company; son's alleged direct negotiations with Department of Justice (DOJ), taking place in District and interfering with proposed representation arrangement, were sufficient to give son notice that he might be hauled into court in District. *Elemery v. Holzmann*, 533 F.Supp.2d 116, 2008 U.S. Dist. LEXIS 8265 (2008), transfer denied

by 533 F. Supp. 2d 144, 2008 U.S. Dist. LEXIS 8238 (D.D.C. 2008).

There was personal jurisdiction, under District of Columbia long arm statute, in suit by representative of construction company against son of company's principal, claiming tortious interference with prospective contract arrangement under which representative would have served as exclusive case manager in qui tam action; representative alleged that son committed tortious act within District by undertaking direct negotiations with Department of Justice (DOJ), and that representative suffered loss of prospective fees as result of son's conduct. *Elemery v. Holzmann*, 533 F.Supp.2d 116, 2008 U.S. Dist. LEXIS 8265 (2008), transfer denied by 533 F. Supp. 2d 144, 2008 U.S. Dist. LEXIS 8238 (D.D.C. 2008).

Real property interests.

Under District of Columbia long-arm statute section providing that when jurisdiction over person is based solely upon long-arm section, only claim for relief arising from acts enumerated in section may be asserted against him, district court did not have jurisdiction against former wife's father derived from former wife's father's interest in real estate in District, and, therefore, district court did not have jurisdiction over father's executor with respect to claims unrelated to real estate. D.C. Code 1973, §§ 13-421 et seq., 13-423(b). *Willis v. Willis*, 655 F.2d 1333, 1981 U.S. App. LEXIS 11980 (C.A.D.C. 1981).

Former wife's father did not have sufficient contacts with District of Columbia so that he could be said to be "transacting business" in District so that district court had jurisdiction over father's executor in action relating to loan agreement which father, daughter, and daughter's former husband entered into. D.C. Code 1973, § 13-423(a), (a)(3, 4). *Willis v. Willis*, 655 F.2d 1333, 1981 U.S. App. LEXIS 11980 (C.A.D.C. 1981).

Interests of reasonableness and fairness did not favor adjudicating dispute between former husband and former wife relating to their rights to property in District of Columbia, since District had little interest in providing forum for nonresident plaintiff, nor did District have interest in subject matter of suit, as agreement in question was neither made nor performed in District and rights asserted on contract involved unsettled issues of Ohio law. D.C. Code 1973, §§ 13-421 et seq., 13-423(a), (a)(3, 4), (b). *Willis v. Willis*, 655 F.2d 1333, 1981 U.S. App. LEXIS 11980 (C.A.D.C. 1981).

Court could exercise personal jurisdiction over a non-resident defendant trust company that had no contacts with the District of Columbia other than taking assignment of a mortgage note secured by real property in the District where the note and rights to the property were

the sources of controversy in the case; trust's claim to ownership of a security interest in mortgagor's property was a contact with the forum sufficient to subject the trust to personal jurisdiction without offending due process standards. *Johnson v. Long Beach Mortg. Loan Trust* 2001-4, 451 F.Supp.2d 16, 2006 U.S. Dist. LEXIS 54264 (2001).

Apartment complex owners' contacts with District of Columbia, directly and through owners' assignors, were adequate to establish jurisdiction under "transacting business" clause of District of Columbia long-arm statute. D.C. Code 1981, § 13-423(a)(1), (b); U.S.C. Const.Amend. 5. *Brown v. Artery Organization, Inc.*, 654 F. Supp. 1106, 1987 U.S. Dist. LEXIS 1321 (1987).

Apartment complex owners' indirect forum contacts, imputed to it as result of its relationship with its assignors, supported exercise of jurisdiction pursuant to District of Columbia long-arm statute. D.C. Code 1981, § 13-423(a)(1), (b); U.S. Const.Amend. 5. *Brown v. Artery Organization, Inc.*, 654 F. Supp. 1106, 1987 U.S. Dist. LEXIS 1321 (1987).

Remand.

In event of presentation of additional facts materially different from those in record on appeal, reviewing court's decision that there was jurisdiction over nonresident defendants under long-arm statute did not preclude trial court from reconsidering question of jurisdiction. D.C. Code 1981, §§ 13-423(a)(1), 17-305(a); U.S. Const.Amend. 5, 14. *Smith v. Jenkins*, 452 A.2d 333, 1982 D.C. App. LEXIS 465 (1982).

Review.

Principles of federalism bind United States Court of Appeals for District of Columbia circuit to follow District of Columbia Court of Appeals' interpretation of District of Columbia jurisdictional statute, and, though Court of Appeals is not literally bound by decisions of lower District of Columbia courts, it will give proper regard to pertinent lower court decisions in determining law of District of Columbia. D.C. Code §§ 11-102, 13-423. *Gatewood v. Fiat, S. p. A.*, 617 F.2d 820, 1980 U.S. App. LEXIS 21116 (C.A.D.C. 1980).

Assertion of libel claim under District of Columbia law against defendants over whom court found that it could not exercise personal jurisdiction did not rise to level of "serious and studied disregard for the orderly process of justice," as required to impose sanctions for multiplying proceedings unreasonably and vexatiously. *McIntosh v. Gilley*, 753 F.Supp.2d 46, 2010 U.S. Dist. LEXIS 125748 (2010).

Remand was required to determine whether patient's medical malpractice claims "arose from" the business that the doctors transacted

in the District of Columbia, such that court would have jurisdiction over doctors under the long-arm statute, although doctors' office was in Virginia and patient was treated in Virginia, where doctors had some degree of advertising in the District, and doctors had professional and commercial contacts in the District. D.C. Code 1981, § 13-423(a)(1). *Etchebarne-Bourdin v. Radice*, 754 A.2d 322, 2000 D.C. App. LEXIS 129 (2000), remanded by 982 A.2d 752, 2009 D.C. App. LEXIS 539 (D.C. 2009).

Remand was required for trial court to determine where patient's "original physical injury" resulting from alleged medical malpractice occurred, to determine whether jurisdiction under long-arm statute existed over Virginia doctors for "tortious injury in the District," although most occasions for doctors' negligence occurred during patient's visits to doctors' Virginia office, as first time that doctors were negligent arguably was when they failed to advise her properly when she called them from the District following automobile accident and her pregnancy began to be imperiled at that time. D.C. Code 1981, § 13-423(a)(4). *Etchebarne-Bourdin v. Radice*, 754 A.2d 322, 2000 D.C. App. LEXIS 129 (2000), remanded by 982 A.2d 752, 2009 D.C. App. LEXIS 539 (D.C. 2009).

RICO Cases.

Saudi Arabian defendant in Racketeer Influenced and Corrupt Organizations Act (RICO) action had sufficient contacts with District of Columbia to support jurisdiction under D.C. long-arm statute, based on his participation in fraudulent acquisition of bank based in D.C., including appearance before Federal Reserve for the purpose of making fraudulent representations, and meeting with co-conspirators. D.C. Code 1981 § 13-423(a). *BCCI Holdings (Lux.)*, S.A. v. *Khalil*, 20 F.Supp.2d 1, 1997 U.S. Dist. LEXIS 22986 (1997).

British defendants were "transacting business" in District of Columbia, and, therefore, were subject to personal jurisdiction under long-arm statute in RICO suit; defendants conducted business meetings in District, sent and received mail, telefaxes, and phone calls to and from District, and held out counsel in District as representative in business matters. D.C. Code 1981, § 13-423(a)(1); 18 U.S.C. § 1961 et seq. *Dooley v. United Technologies Corp.*, 803 F. Supp. 428, 1992 U.S. Dist. LEXIS 15955 (1992).

Employer was "transacting business" within District of Columbia when it allegedly developed and implemented scheme to sell armed helicopters to Saudi Arabia without permission of United States government, and thus, employer was amenable to jurisdiction in District under "transacting business" provision of District's long-arm statute in Racketeer Influenced and Corrupt Organizations Act (RICO) action

by employee who was allegedly demoted for refusing to cooperate with scheme; employee alleged that employer conducted business in District related to scheme, that employer sought out District-based corporation to become conduit for bribes passed to Saudis, and that employer made numerous phone calls and mailings into District which directly related to scheme. D.C. Code 1981, § 13-423(a)(1). *Dooley v. United Technologies Corp.*, 786 F. Supp. 65, 1992 U.S. Dist. LEXIS 2838 (1992).

In Racketeer Influenced and Corrupt Organizations Act (RICO) action alleging that corporation and its parent implemented scheme to bribe Saudi Arabian officials into purchasing parent's armed helicopters without permission of United States government, court had personal jurisdiction over corporate employees under District of Columbia's long-arm statute; all employees made numerous trips to District in furtherance of helicopter sales, and, even if certain of their contacts with District fell under government contacts exception to personal jurisdiction, many did not, as they did not involve simply meetings with government officials. D.C. Code 1981, § 13-423(a)(1). *Dooley v. United Technologies Corp.*, 786 F. Supp. 65, 1992 U.S. Dist. LEXIS 2838 (1992).

In Racketeer Influenced and Corrupt Organizations Act (RICO) action arising from corporation allegedly bribing Saudi Arabians into purchasing its armed helicopters without United States government's approval, court had personal jurisdiction under District of Columbia's long-arm statute over corporation and its principal who allegedly acted as go-between for corporation and Saudi ambassador; principal admitted to 12 meetings in District with Ambassador and "unspecified number" of mailings to ambassador, and principal's contacts with ambassador did not fall under government contacts exception to personal jurisdiction. D.C. Code 1981, § 13-423(a)(1). *Dooley v. United Technologies Corp.*, 786 F. Supp. 65, 1992 U.S. Dist. LEXIS 2838 (1992).

Plaintiff's allegation, without further supporting details, that defendant corporation lobbied Saudi Arabian ambassador to promote scheme to sell armed helicopters to Saudis without United States government's approval was insufficient to satisfy personal jurisdiction over corporation under District of Columbia's long-arm statute in action against corporation and others under Racketeer Influenced and Corrupt Organizations Act (RICO). 18 U.S.C. § 1961 et seq.; D.C. Code 1981, § 13-423(a)(1). *Dooley v. United Technologies Corp.*, 786 F. Supp. 65, 1992 U.S. Dist. LEXIS 2838 (1992).

Corporation's lobbying of Congress to obtain and amend its licensing agreement with helicopter manufacturer, in furtherance of alleged scheme to sell armed helicopters to Saudi Arabia without United States government's ap-

proval, could not be basis for exercise of personal jurisdiction over corporation under District of Columbia's long-arm statute in Racketeer Influenced and Corrupt Organizations Act (RICO) action, as those lobbying efforts were exempted under government contacts doctrine; corporation's purported efforts to encourage Congress to approve licensing agreement and subsequent amendment were activities implicating First Amendment rights. 18 U.S.C. § 1961 et seq.; D.C. Code 1981, § 13-423(a)(1); U.S.C. Const. Amend. 1. *Dooley v. United Technologies Corp.*, 786 F. Supp. 65, 1992 U.S. Dist. LEXIS 2838 (1992).

Alleged contact between helicopter manufacturer's employee and defendant corporation in manufacturer's District of Columbia (D.C.) office to coordinate amendment to licensing agreement in furtherance of alleged scheme to allow sale of armed helicopters to Saudi Arabia without United States government's approval, did not provide basis for exercise of personal jurisdiction over corporation under District's long-arm statute; nowhere in complaint did plaintiff state with any specificity nature of contact between defendant corporation and manufacturer's employee or manufacturer's District office. 18 U.S.C. § 1961 et seq.; D.C. Code 1981, § 13-423(a)(1). *Dooley v. United Technologies Corp.*, 786 F. Supp. 65, 1992 U.S. Dist. LEXIS 2838 (1992).

Plaintiff alleged sufficient facts to subject nonresident corporation to personal jurisdiction under District of Columbia's long-arm statute under conspiracy theory, in Racketeer Influenced and Corrupt Organizations Act (RICO) action alleging illegal scheme to sell armed helicopters to Saudi Arabia without United States government's approval; plaintiff sufficiently alleged corporation's involvement in conspiracy by alleging that it played role in filing of licensing application which allowed helicopters to be armed without approval from United States government, and plaintiff also alleged overt acts by coconspirators committed in District in furtherance of conspiracy. 18 U.S.C. § 1961 et seq.; D.C. Code 1981, § 13-423(a)(1). *Dooley v. United Technologies Corp.*, 786 F. Supp. 65, 1992 U.S. Dist. LEXIS 2838 (1992).

Service of process.

Virginia real estate broker's mailing of copy of summons and complaint to securities broker's corporate headquarters in Nebraska did not establish jurisdiction of District of Columbia courts under District statute authorizing general jurisdiction based on corporation doing business in District, notwithstanding District of Columbia Superior Court rule that appeared to permit service upon corporations by mail. *Gorman v. Ameritrade Holding Corp.*, 293 F.3d

506, 2002 U.S. App. LEXIS 11674 (C.A.D.C. 2002).

For the court to exercise jurisdiction over a defendant that does not reside in the District of Columbia, service of process must be authorized by the District of Columbia's long-arm statute and comport with the Due Process Clause of the Fifth Amendment. *Agee v. Sebelius*, 668 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 101497 (2009).

Service provision of Racketeer Influenced and Corrupt Organizations Act (RICO) did not allow district court in District of Columbia to exercise personal jurisdiction over New York corporation when none of defendants in action were subject to personal jurisdiction in District of Columbia. *World Wide Minerals Ltd. v. Republic of Kazakhstan*, 116 F.Supp.2d 98, 2000 U.S. Dist. LEXIS 14624 (2000), affirmed in part and remanded in part by 296 F.3d 1154, 353 U.S. App. D.C. 147, 2002 U.S. App. LEXIS 15485, RICO Bus. Disp. Guide P10307 (2002).

In action brought by a District of Columbia resident against government of Brazil for damage to his home allegedly resulting from construction of Brazilian embassy, service of summons and complaint upon government of Brazil by registered mail delivered to Ministry of External Relations in Brazilia and by registered mail delivered to the Brazilian embassy in the District of Columbia were reasonably calculated to provide adequate notice of action and both methods of service were valid. Fed.Rules Civ.Proc. rules 4, 4(e, i), 18 U.S.C.; D.C. Code §§ 13-423, 13-431. *Renard v. Humphreys & Harding, Inc.*, 59 F.R.D. 530, 1973 U.S. Dist. LEXIS 13529 (1973).

Landlord that knew tenant's Colorado address and telephone number could not serve tenant by posting summons for eviction action on premises and could have served tenant by mail requiring signed receipt; landlord was unable to locate anyone residing on premises. D.C. Code 1981, §§ 13-401, 13-402, 13-423(a)(5), 13-424, 13-431(a)(3), 45-1406; Landlord and Tenant Rule 4. *Frank Emmet Real Estate, Inc. v. Monroe*, 562 A.2d 134, 1989 D.C. App. LEXIS 145 (1989).

Where the petitioner did not live in the District at the time the suit was filed, respondent was not personally served with process, and none of the conduct relating to the cause of action occurred in the District, the court did not have in personam jurisdiction under this section. *L.T. v. J.C.*, 125 WLR 1309 (Super. Ct. 1997).

State entities.

Federal district court sitting in District of Columbia lacked personal jurisdiction over State of Maryland, in suit alleging deprivation of due process and equal protection rights of claimant; states were not "persons" under Dis-

trict's long-arm statute, and in any event State had not taken any action within District subjecting it to jurisdiction. *Moore v. Motz*, 437 F.Supp.2d 88, 2006 U.S. Dist. LEXIS 41950 (2006).

Sufficiency of evidence.

General rule is that plaintiff has burden of establishing personal jurisdiction, and though claims were dismissed without evidentiary hearing, and court was thus bound to resolve in favor of party asserting jurisdiction all disputes concerning relevant facts presented in the record, record sustained district court's holding that plaintiff failed to meet his burden of establishing court's personal jurisdiction in the District of Columbia over the individual defendants. D.C. Code 1981, § 13-423(a), (a)(3). *Reuber v. United States*, 750 F.2d 1039, 1984 U.S. App. LEXIS 16101 (C.A.D.C. 1984).

Delaware corporation failed to establish that its former directors had sufficient minimum contacts with District of Columbia to permit exercise of personal jurisdiction over them in corporation's action for, inter alia, breach of contract and breach of fiduciary duty when corporation alleged merely that former directors, who were residents of either Germany or Switzerland, had served on its board of directors and that it conducted business in District of Columbia, that former directors assumed their responsibilities at board meeting held in District of Columbia, and that one former director also entered into employment contract with corporation, particularly when corporation did not allege that board meeting which occurred in District of Columbia was related to former directors' alleged unlawful conduct, or dispute allegation that all other board meetings occurred in Germany. *NAWA USA, Inc. v. Botler*, 533 F.Supp.2d 52, 2008 U.S. Dist. LEXIS 7577 (2008), appeal dismissed by 2008 U.S. App. LEXIS 27993 (D.C. Cir. Dec. 15, 2008).

Torts outside District.

— Connection with injury, torts outside district.

District of Columbia long-arm statute did not authorize exercise of personal jurisdiction with respect to tort claims arising from accident in another country. D.C. Code 1981, § 13-423. *Jungquist v. Sheikh Sultan Bin Khalifa Al Nahyan*, 115 F.3d 1020, 1997 U.S. App. LEXIS 14472 (C.A.D.C. 1997).

Federal District Court sitting in District of Columbia lacked specific personal jurisdiction over bank located in Jordan, in connection with wrongful employee discharge claim brought by Jordan-based regional manager of subsidiary located in District; none of the bank's general business with district had any connection with his tortious injury claim. D.C. Code 1981, § 13-423(a)(1). *El-Fadl v. Central Bank of Jordan*, 75

F.3d 668, 1996 U.S. App. LEXIS 1552 (C.A.D.C. 1996).

One invoking District of Columbia long-arm statute permitting exercise of jurisdiction over claim for relief arising from tortious injury caused by act or omission outside District if defendant regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in District need not show that injury in District was directly related to actual business solicitation, course of conduct or derivation of revenue, but, rather, where jurisdiction is based on such provision, subsection limiting jurisdiction solely to claims for relief arising from acts enumerated in the section requires only that claim for relief arise out of injury occurring in the District. D.C. Code §§ 13-421, 13-423, 13-423(a)(4), (b). *Gatewood v. Fiat*, S. p. *Gatewood v. Fiat*, S. p. A., 617 F.2d 820, 1980 U.S. App. LEXIS 21116 (C.A.D.C. 1980).

Even if Bahamian bank and its Swiss parent stole \$14 million from purported account holder and bank's manager engaged in physical altercation with account holder's daughter, a Nevada citizen who allegedly possessed rights to purported account, these acts did not cause an injury in the District of Columbia, as required for District of Columbia to assert specific jurisdiction over banks and manager under District of Columbia's long-arm statute in daughter's lawsuit alleging she possessed rights to the alleged account. *Day v. Corn.r Bank (Overseas) Ltd.*, 789 F.Supp.2d 150, 2011 U.S. Dist. LEXIS 83749 (2011).

Federal district court sitting in District of Columbia did not have specific personal jurisdiction over Swedish national telephone company in consultancy firm's action for damages, return of property, and cease and desist order arising from Swedish corporation's alleged takeover of consultancy firm's Swedish operations, even if telephone company did transact business in District of Columbia, given that all actions alleged to have caused injury to consultancy firm and its shareholders occurred elsewhere, neither plaintiffs nor defendants resided in District of Columbia, no action was taken in District of Columbia to harm firm or shareholders, and no consequences of alleged actions were shown to have had impact in District of Columbia. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

Personal jurisdiction over New Jersey defendants was lacking under District of Columbia's long-arm statute; alleged assaults of the plaintiff in New Jersey lacked any connection with District of Columbia forum. *Hilska v. Jones*, 267 F.Supp.2d 100, 2003 U.S. Dist. LEXIS

10436 (2003), dismissed in part by 217 F.R.D. 16, 2003 U.S. Dist. LEXIS 12831 (D.D.C. 2003).

Claim asserted by customer against corporation for injuries allegedly resulting from fall which occurred in one of corporation's retail suburban store in Virginia did not constitute a claim "arising from" corporation's advertising in the District so as to permit exercise of "personal jurisdiction" over corporation under District long-arm statute. D.C. Code 1981, § 13-423(a)(1), (b); U.S.C. Const.Amends. 5, 14. *Bayles v. K-Mart Corp.*, 636 F. Supp. 852, 1986 U.S. Dist. LEXIS 24112 (1986).

Requisite injury in the District of Columbia under District of Columbia statute which permits jurisdiction over a party who both causes an injury in the district by an act or omission outside the District and has some other reasonable connection with the District need not arise from or have any connection with the business or conduct in the District. D.C. Code § 13-423(a)(4). *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913, 1980 U.S. Dist. LEXIS 16849 (1980).

District of Columbia long-arm statute does not require that the contacts required for jurisdiction such as regular solicitation of business or specific course of contact have direct relationship to the act or failure to act which caused plaintiff's injury. D.C. Code §§ 13-402, 13-423(a)(4), (b). *Aiken v. Lustine Chevrolet, Inc.*, 392 F. Supp. 883, 1975 U.S. Dist. LEXIS 13158 (1975).

District of Columbia long-arm statute granting personal jurisdiction based on conduct over a person who causes tortious injury in the District of Columbia by an act or omission in the District clearly separates act from tortious injury and affords personal jurisdiction over nonresidents only when both act and injury occur in the District. D.C. Code § 13-423(a)(3, 4). *Margoles v. Johns*, 333 F. Supp. 942, 1971 U.S. Dist. LEXIS 10715 (1971), affirmed by 483 F.2d 1212, 157 U.S. App. D.C. 209, 1973 U.S. App. LEXIS 9394 (1973).

Assuming that Mexican elevator repair company transacted business in the District within the meaning of the long-arm statute so that it could reasonably have foreseen being hauled into court in the District, there was not a substantial connection between the company's contacts with the forum and American Embassy employee's claim for relief, where the company's alleged contacts were limited to the occasional sale of parts to another company that used them in buildings in the District, but employee's claim was based on personal injuries she sustained in Mexico as the result of an elevator accident at the embassy. *Gonzalez v. Internacional de Elevadores, S.A.*, 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

To satisfy nexus requirement of District of Columbia long-arm statute, resident patron's slip-and-fall claim against nonresident grocery

corporation based on slip in Maryland store near District of Columbia's borders had to have been related to or substantially connected with corporation's advertising activity in District, that is, it had to have had some discernible relationship to corporation's advertising activity. U.S. Const. Amends. 5, 14; D.C. Code 1981, § 13-423(b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

Resident patron's slip-and-fall claim against nonresident grocery corporation based on slip in Maryland store near District of Columbia's borders had some discernible relationship to corporation's extensive advertising activity in major circulation District newspaper, and thus, nexus requirement of District long-arm statute was satisfied. U.S. Const. Amends. 5, 14; D.C. Code 1981, § 13-423(b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

Nexus between California automobile distributor's act of distributing cars in District of Columbia and auto collision taking place in North Carolina was too tenuous to satisfy long-arm statute's requirements for personal jurisdiction in action alleging design defect and failure to warn. D.C. Code 1981, § 13-423. *Everett v. Nissan Motor Corp.*, 628 A.2d 106, 1993 D.C. App. LEXIS 171 (1993).

Nonresident defendant corporation's use of detail men to solicit sales in District of Columbia would not support exercise of in personam jurisdiction when cause of action was unrelated to the solicitations as jurisdiction in such cases requires not only continuous but also substantial forum activity by defendant. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

Though business of nonresident defendant was making fuel deliveries, some of which were made in the District of Columbia, where plaintiff's claim for relief from the automobile accident did not arise from any of the District-related acts, viz., deliveries to the district, but from an activity which occurred completely within Maryland, viz., delivery of fuel by the truck striking plaintiff's automobile, claim did not relate to particular act or transaction forming basis of personal jurisdiction and, hence, did not fall within jurisdiction of trial court under long-arm statute. D.C. Code § 13-423; U.S. Const. Amend. 14. *Berwyn Fuel, Inc. v. Hogan*, 399 A.2d 79, 1979 D.C. App. LEXIS 311 (1979).

No personal jurisdiction over defendants shown where plaintiff was a Virginia resident seeking medical treatment in connection with her pregnancy from Virginia doctors at their offices in Virginia and asserting that defendants' negligent treatment, all of which occurred in Virginia, resulted in her giving birth to a stillborn child in a Virginia hospital.

Etchebarne-Bourdin v. Radice, 124 WLR 2253 (Super. Ct. 1996).

— Course of conduct, torts outside district.

Conclusory allegations that regional telephone operating companies secured advertising revenue by increasing the user traffic on their Yellow Pages websites and that provider of Internet business directories lost advertising revenues as a result of the companies' actions were not sufficient to show that the regional companies caused tortious injury in the District of Columbia by an act outside the District, within meaning of District's long-arm statute when the companies had no demonstrated physical contacts in the District, on theory that the conduct of the regional companies was persistent within meaning of the statute because their websites are "highly interactive" with District users and significantly commercial in both quality and nature. D.C. Code 1981, § 13-423(a)(4). *GTE New Media Services Inc. v. BellSouth Corp.*, 199 F.3d 1343, 2000 U.S. App. LEXIS 257 (C.A.D.C. 2000).

Personal jurisdiction over nonresidents in the District of Columbia could not be based solely on the ability of District residents to access the defendants' websites, as this would not by itself show any "persistent course of conduct" by the defendants in the District within meaning of subsection of District long-arm statute relating to causing tortious injury in the District by conduct outside the District. D.C. Code 1981, § 13-423(a)(4). *GTE New Media Services Inc. v. BellSouth Corp.*, 199 F.3d 1343, 2000 U.S. App. LEXIS 257 (C.A.D.C. 2000).

"Persistent course of conduct," to which District of Columbia long-arm statute refers in permitting exercise of jurisdiction over person who causes injury in District by act outside District so long as he regularly engages in any persistent course of conduct within District, denotes connections considerably less substantial than those required to establish general, all-purpose jurisdiction on basis of doing business in forum. D.C. Code 1973, § 13-334(a). *Steinberg v. International Criminal Police Organization*, 672 F.2d 927, 1982 U.S. App. LEXIS 21827 (C.A.D.C. 1981).

In order to demonstrate that defendant has engaged in "persistent contact" under "causing tortious injury" clause of District of Columbia's long-arm statute, plaintiff need not show any conduct related to injury-causing act, but must show some other reasonable connection between defendant and forum. D.C. Code 1981, § 13-423(a)(4). *Heroes, Inc. v. Heroes Found.*, 958 F. Supp. 1, 1996 U.S. Dist. LEXIS 20660 (1996).

Persistent course of conduct may be deemed to constitute transaction of business for asser-

tion of personal jurisdiction under District of Columbia long-arm statute only if that persistent conduct is undertaken in that person's individual capacity, rather than his official capacity conducting business for his employer. D.C. Code 1981, § 13-423. *Pollack v. Meese*, 737 F. Supp. 663, 1990 U.S. Dist. LEXIS 3379 (1990).

Fact that Virginia attorney had been counsel of record in two or three unrelated actions brought in District of Columbia courts over past ten years was insufficient to constitute "continuous and persistent course of business," within meaning of District of Columbia long-arm statute; District of Columbia cases constituted only insignificant fraction of attorney's caseload, which was predominantly in Virginia. D.C. Code 1981, § 13-423(a)(4). *Parsons v. Mains*, 580 A.2d 1329, 1990 D.C. App. LEXIS 259 (1990).

— Doing business, torts outside district.

When a District of Columbia resident accesses the Yellow Pages websites of regional telephone operating companies lacking any physical contact with the District, the companies are not thereby "transacting business" in the District within meaning of District long-arm statute; any resulting business transaction is between the consumer and a business found in the Yellow Pages, not between the consumer and the provider of the Yellow Pages. D.C. Code 1981, § 13-423(a)(1). *GTE New Media Services Inc. v. BellSouth Corp.*, 199 F.3d 1343, 2000 U.S. App. LEXIS 257 (C.A.D.C. 2000).

National cable television company and local cable television company providing and supporting national cable company's services did not have a unity of ownership interest as would establish that one was an alter ego of the other, as would allow federal court in District of Columbia to assert personal jurisdiction over local cable company, which provided service to subscriber in Maryland, in subscriber's action against cable companies and credit agencies for violation of Fair Debt Collection Practices Act and Fair Credit Reporting Act; although the companies shared 33 officers including the same president, vice president, treasurer, and secretary, and provided related services, neither company owned any part of the other, they did not share staff, property, or a business purpose, each had separate budgets and separate funds, and neither entity co-mingled funds or assets with the other, or diverted the other entity's funds for its own use. *Tall v. Comcast of Potomac, LLC*, 729 F.Supp.2d 342, 2010 U.S. Dist. LEXIS 79983 (2010), affirmed by 439 Fed. Appx. 1, 2011 U.S. App. LEXIS 19292 (D.C. Cir. 2011).

Florida accounting firm's performance of accounting services for seven clients who resided in the District of Columbia did not subject it to

personal jurisdiction in the District under the District's long-arm statute in federal securities fraud action; services provided to the clients arose out of the firm's presence in Florida, rather than as result of any regular business relationships or persistent course of conduct in the District. *Burman v. Phoenix Worldwide Indus.*, 437 F.Supp.2d 142, 2006 U.S. Dist. LEXIS 46070 (2006).

Mere fact that nonresident defendants had retained District of Columbia counsel for purpose of defending personal injury case did not constitute "doing business" in District of Columbia and did not justify the exercise of personal jurisdiction under District of Columbia long-arm statute. D.C. Code 1981, § 13-423. *Staton v. Looney*, 704 F. Supp. 303, 1989 U.S. Dist. LEXIS 3023 (1989).

Foreign manufacturers, licensees, and distributors of asbestos-related products that allegedly caused injury to plaintiff who was exposed to those products were "transacting business" in the District of Columbia within meaning of District of Columbia long-arm statute, even though at time of plaintiff's suit defendants had not had contacts with District for 12 years, where defendants' sublicensees brought products in question into District under sublicense agreements that expressly included District as territory for distribution of products. D.C. Code 1981, § 13-423(a)(1, 4). *McDaniel v. Armstrong World Industries*, 603 F. Supp. 1337, 1985 U.S. Dist. LEXIS 21753 (1985).

Personal jurisdiction pursuant to District of Columbia's long-arm statute was not proper over automobile salesman, sued in his individual capacity on basis of fraudulent representations in sale of automobile to resident of the District in absence of showing that defendant had any contacts whatsoever with District. D.C. Code §§ 13-423(a)(4), 13-425. *Aiken v. Lustine Chevrolet, Inc.*, 392 F. Supp. 883, 1975 U.S. Dist. LEXIS 13158 (1975).

Foreign newspaper corporation maintaining office and news correspondents in District of Columbia for a gathering of news is not "doing business" for purpose of service of process on a local reporter news correspondent. D.C. Code §§ 13-421, 13-423(a)(4), (b). *Margoles v. Johns*, 333 F. Supp. 942, 1971 U.S. Dist. LEXIS 10715 (1971), affirmed by 483 F.2d 1212, 157 U.S. App. D.C. 209, 1973 U.S. App. LEXIS 9394 (1973).

In a medical malpractice case, there was no factual basis for exercising personal jurisdiction over defendant where there was no factual showing, by affidavit, proffer or otherwise, that defendant personally rendered medical services in the District of Columbia sufficient to constitute transacting business under subdivision (a)(1) of this section, or that he had caused tortious injury in the District by an act or

omission outside of the District while he was regularly doing business in the District, while he engaged in any other persistent course of conduct in the District, or while he derived substantial revenue from services rendered in the District. *Colclough v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, 121 WLR 189 (Super. Ct. 1992).

— Due process, torts outside district.

Touchstone of due process inquiry regarding assertion of personal jurisdiction over nonresident insurers under District of Columbia long-arm statute was whether it would have been foreseeable that the insurers would be hauled into court in the District; such was foreseeable in that insurers knew that their insured, a large drug manufacturer, distributed products at issue nationwide and that if insured were sued it was likely to attempt to implead insurers if a dispute arose over their duty to indemnify or defend. D.C. Code 1981, § 13-423(a)(3); U.S.C. Const. Amends. 5, 14. *Eli Lilly & Co. v. Home Ins. Co.*, 794 F.2d 710, 1986 U.S. App. LEXIS 27494 (C.A.D.C. 1986), writ of certiorari denied by 479 U.S. 1060, 107 S. Ct. 940, 93 L. Ed. 2d 990, 1987 U.S. LEXIS 401, 55 U.S.L.W. 3494 (1987), writ of certiorari denied by 479 U.S. 1060, 107 S. Ct. 940, 93 L. Ed. 2d 991, 1987 U.S. LEXIS 402, 55 U.S.L.W. 3494 (1987).

Exercise of jurisdiction under District of Columbia long-arm statute comported with due process where nonresident corporate defendant had contacts with District independent of vehicle accident, where they each knew that many automobiles they sold would be used in District and where they derived substantial revenue from sales thereof, where witnesses to accident might be residents of District, where plaintiff had been treated in District hospital and District police officers had investigated accident, though such defendants had no offices in District, plaintiff was not resident of District and automobile at issue was not registered there. D.C. Code § 13-423(a)(4). *Gatewood v. Fiat, S. p. Gatewood v. Fiat, S. p. A.*, 617 F.2d 820, 1980 U.S. App. LEXIS 21116 (C.A.D.C. 1980).

Service by certified mail upon former United States attorney and assistant United States attorney for northern district of Florida, in action for money damages brought against them and others, individually and in their official capacities, in federal district court for District of Columbia, alleging violations of constitutional rights of members of antiwar organization arising from Justice Department attorney's knowingly false testimony in grand jury proceedings conducted in Florida in 1972 at which members of organization were subpoenaed to appear, was not violative of due process because of such defendants' supposed lack of minimum contacts with District of Columbia. 18 U.S.C. § 1391(e); Fed. Rules Civ. Proc. rule

4(d)(5), 18 U.S.C.; D.C. Code § 13-423(a); U.S. Const. art. 3, § 1; Amend. 14. *Briggs v. Goodwin*, 569 F.2d 1, 1977 U.S. App. LEXIS 11469 (C.A.D.C. 1977), reversed by 444 U.S. 527, 100 S. Ct. 774, 63 L. Ed. 2d 1, 1980 U.S. LEXIS 76 (1980).

District of Columbia's long-arm statute relating to causing tortious injury in the District by conduct outside the District is given an expansive interpretation that is coextensive with the due process clause. *Copeland-Jackson v. Oslin*, 555 F.Supp.2d 213, 2008 U.S. Dist. LEXIS 41615 (2008).

— Establishing jurisdiction, torts outside district.

Defendant is subject to District of Columbia's long-arm statute if he causes injury in District by act committed elsewhere and, in addition, has some other reasonable connection with District, such as engaging in persistent course of conduct within District. D.C. Code, 1981 § 13-423(a)(4). *Crane v. New York Zoological Soc.*, 894 F.2d 454, 1990 U.S. App. LEXIS 1145 (C.A.D.C. 1990).

Person alleged to have caused tortious injury by act or omission outside District of Columbia is subject to jurisdiction therein, under District of Columbia long-arm statute provision allowing jurisdiction over claim arising from person's causing tortious injury in District by act or omission outside thereof if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in District, if defendant so solicits business in District, so engages in course of conduct in District or so derives substantial revenue from goods used or consumed, or services rendered, in District and if claim arises out of injury, which occurred in the District. D.C. Code §§ 13-423, 13-423(a)(1, 4). *Gatewood v. Fiat, S. p. A.*, 617 F.2d 820, 1980 U.S. App. LEXIS 21116 (C.A.D.C. 1980).

Contract between Singaporean private-security corporation headquartered in Dubai and government contractor which also had a contract with United States Agency for International Development (USAID) provided insufficient connection to forum to establish specific jurisdiction over corporation under District of Columbia long-arm statute in actions brought by estate and survivor of Iraqi citizens alleging that corporation's personnel shot and killed citizens in Iraq; although USAID was based in District of Columbia, contract between corporation and contractor was executed in Dubai, corporation's contacts with contractor occurred in North Carolina, and subcontractor clause in contractor's contract with USAID which was allegedly binding on corporation was too tenuous a connection on which to establish a jurisdictional basis. *Estate of Manook v. Research*

Triangle Inst., Int'l, 693 F.Supp.2d 4, 2010 U.S. Dist. LEXIS 17257 (2010).

Examining whether a product has been placed in the stream of commerce may be appropriate when determining whether a court may exercise personal jurisdiction over a defendant pursuant to the "transacting any business" provision of the District of Columbia long-arm statute, which is coextensive with the Due Process Clause; however, it is irrelevant in determining whether a defendant is subject to personal jurisdiction under the "tortious injury" provision, which requires that both act and injury occur in the District of Columbia. *Burman v. Phoenix Worldwide Indus.*, 437 F.Supp.2d 142, 2006 U.S. Dist. LEXIS 46070 (2006).

Attorney who represented inmate's co-defendant in criminal prosecution was not subject to personal jurisdiction in District of Columbia in inmate's civil rights action, where attorney was based in Missouri, attorney did not reside in or have office in District, none of alleged tortious acts occurred in District, and inmate did not allege that tortious injury resulted from any actions of attorney that occurred in District. *Robinson v. Ashcroft*, 357 F.Supp.2d 146, 2004 U.S. Dist. LEXIS 27142 (2004).

Medical school graduates who brought suit alleging that system for assigning medical students to medical residency programs violated the Sherman Act failed to establish personal jurisdiction under the "tortious injury" prong of District of Columbia long-arm statute over entities responsible for system, based on allegation that they lost "the right to negotiate with employers in the District of Columbia for placement as resident physicians" as a result of the alleged anticompetitive activity, absent allegation that any named plaintiff pursued or would have pursued a resident position within the District of Columbia. *Jung v. Ass'n of Am. Med. Colleges*, 300 F.Supp.2d 119, 2004 U.S. Dist. LEXIS 1826 (2004).

District court had personal jurisdiction under District of Columbia long-arm statute over non-resident regional telephone operating companies in action brought under Clayton Act by communications corporation which operated nationwide Internet Yellow Pages service, in which corporation alleged that, as result of conspiracy involving regional operating companies, District of Columbia users seeking Internet Yellow Pages service were directed by popular web browser toward nationwide service provided by regional companies; corporation sufficiently alleged tortious injury in District caused by acts outside District, and corporations maintained website which was highly interactive with users in District and significantly commercial in quality and nature. Clayton Act, § 1 et seq., as amended, 15 U.S.C. § 12 et seq.; D.C. Code 1981, § 13-423(a)(4). *GTE*

New Media Servs., Inc. v. Ameritech Corp., 21 F.Supp.2d 27, 1998 U.S. Dist. LEXIS 15413 (1998), remanded by 199 F.3d 1343, 339 U.S. App. D.C. 332, 2000 U.S. App. LEXIS 257, 2000-1 Trade Cas. (CCH) P72749 (2000).

To establish personal jurisdiction over foreign defendant under District of Columbia long-arm statute, plaintiff must allege sufficient facts to make out prima facie showing that (1) plaintiff suffered tortious injury in District of Columbia, (2) injury was caused by defendant's act or omission outside of District of Columbia, and (3) defendants had one of three enumerated contacts with District of Columbia; last inquiry focuses on whether defendant regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in District. D.C. Code 1981, § 13-423(a)(4). *GTE New Media Servs., Inc. v. Ameritech Corp.*, 21 F.Supp.2d 27, 1998 U.S. Dist. LEXIS 15413 (1998), remanded by 199 F.3d 1343, 339 U.S. App. D.C. 332, 2000 U.S. App. LEXIS 257, 2000-1 Trade Cas. (CCH) P72749 (2000).

To establish personal jurisdiction under District of Columbia long-arm statute's provision for tortious injury resulting from act outside District of Columbia, plaintiff must make prima facie showing that (1) plaintiff suffered tortious injury in District, (2) injury was caused by defendant's act or omission outside of District, and (3) defendants had one of three enumerated contacts with District; plaintiff must satisfy all three requirements and establish minimum contacts within confines of due process. U.S. Const. Amends. 5, 14; D.C. Code 1981, § 13-423(a)(4). *Blumenthal v. Drudge*, 992 F. Supp. 44, 1998 U.S. Dist. LEXIS 5606 (1998).

Employees' allegations that unlawful employment practices and tortious acts were committed "in the District of Columbia, among other locations" insufficiently alleged jurisdiction under District of Columbia long-arm statute for act or omission outside district causing tortious injury in district. D.C. Code 1981, § 13-423(a)(4). *Richard v. Bell Atl. Corp.*, 946 F. Supp. 54, 1996 U.S. Dist. LEXIS 17637 (1996).

Personal jurisdiction existed under the long-arm statute of the District of Columbia over partner in accounting firm, in action arising out of alleged misrepresentations in financial statements which had been prepared in Maryland; the injury occurred in the District of Columbia in that lender allegedly received the alleged misleading financial statements in the District of Columbia, and the accounting firm maintained office in the District of Columbia and had at least 27 partners listed for the District of Columbia. Fed.R.Civ.Proc. Rule 4(e), 18 U.S.C.; D.C. Code 1981, § 13-423(a)(4). *National Bank*

of *Washington v. Mallery*, 669 F. Supp. 22, 1987 U.S. Dist. LEXIS 8017 (1987).

There was no basis for jurisdiction over foreign air carrier under District of Columbia long-arm statute where plaintiff's claim did not arise out of carrier's activities in the District, but out of a flight in the Middle East, and carrier had neither office nor personnel in the District. D.C. Code 1981, §§ 13-334, 13-423. *Kapar v. Kuwait Airways Corp.*, 663 F. Supp. 1065, 1987 U.S. Dist. LEXIS 6070 (1987), affirmed in part and remanded in part by 845 F.2d 1100, 269 U.S. App. D.C. 355, 1988 U.S. App. LEXIS 6153 (1988).

For jurisdiction over nonresident defendant to exist under District of Columbia long-arm statute, there must be a tortious injury within District of Columbia which was caused by defendant's acts or omissions outside District of Columbia, provided defendant has been regularly doing or soliciting business within District of Columbia, engaging in any other persistent course of conduct within District of Columbia, or deriving substantial revenue from goods used or consumed, or services rendered, in District of Columbia. D.C. Code 1981, § 13-423(a)(4). *Trager v. Wallace Berrie & Co.*, 593 F. Supp. 223, 1984 U.S. Dist. LEXIS 24083 (1984).

"Connection" requirement of District of Columbia statute which permits jurisdiction over a party who both causes an injury in the District by an act of omission outside the District and has "some other reasonable connection" may be met by regularly doing or soliciting business in the District, by engaging in any persistent course of conduct in the District, or by deriving substantial revenue from goods used or consumed, or services rendered, in the District. D.C. Code § 13-423(a)(4). *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913, 1980 U.S. Dist. LEXIS 16849 (1980).

Court could properly assert personal jurisdiction over dealer which conducted sales activities within the District of Columbia and which through its refusal to accept return of automobile allegedly caused injury to purchaser's credit rating in District and to her mental and emotional well-being. D.C. Code § 13-423; 18 U.S.C. § 1332. *Aiken v. Lustine Chevrolet, Inc.*, 392 F. Supp. 883, 1975 U.S. Dist. LEXIS 13158 (1975).

Under District of Columbia long-arm jurisdiction statute, regularly doing any kind of business within the District or engaging in any kind of persistent course of conduct within the District will subject defendant to long-arm jurisdiction. D.C. Code § 13-423(a)(1, 4), (b). *Security Bank, N. A. v. Tauber*, 347 F. Supp. 511, 1972 U.S. Dist. LEXIS 12035 (1972).

Superior Court had personal jurisdiction under long-arm statute over doctors, who practiced outside of the District of Columbia, to consider patient's claims of medical malpractice

for injury suffered in the District as a result of an allegedly tortious act or omission outside the District; no nexus between doctors' persistent course of conduct in the District based on their participation in continued education meetings and the tortious act was required in order for court to exercise personal jurisdiction pursuant to long-arm statute. *Etchebarne-Bourdin v. Radice*, 982 A.2d 752, 2009 D.C. App. LEXIS 539 (2009).

— In general.

In order to exercise jurisdiction over a non-resident defendant pursuant to tortious injury subsection of District of Columbia long-arm statute, the defendant must have caused tortious injury within the District and one of the "plus factors" in that subsection must also be present. *D'Onofrio v. SFX Sports Group, Inc.*, 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Federal court in District of Columbia lacked personal jurisdiction over defendants in negligence action that arose from automobile accident; plaintiff and defendant both resided in Virginia, and accident occurred in Virginia. *Fed.R.Civ.Proc. Rule 4(k)*, 18 U.S.C.; D.C. Code 1981, §§ 13-422, 13-423. *Jennings v. Coutscoudis*, 941 F. Supp. 5, 1996 U.S. Dist. LEXIS 15766 (1996), affirmed by 1997 U.S. App. LEXIS 19039 (D.C. Cir. June 17, 1997).

Various prongs of the District of Columbia long-arm statute were not meant to be mutually exclusive; thus, "transacting business" prong of statute is not restricted to contract actions, but may be applied to tort actions, even though statute also contains prong authorizing jurisdiction over defendants in actions involving torts committed outside the District with injury resulting inside District. D.C. Code 1981, §§ 13-423, 13-423(a)(1, 4). *McDaniel v. Armstrong World Industries*, 603 F. Supp. 1337, 1985 U.S. Dist. LEXIS 21753 (1985).

Although District of Columbia has general concern with protecting residents from defective consumer products, it did not have an interest in adjudicating a dispute by a nonresident plaintiff against a nonresident defendant on cause of action which arose entirely outside forum. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

— Injury within District, torts outside district.

Injury to warrant holder as result of corporate merger occurred before warrant holder became resident of District of Columbia, and, thus, warrant holder was not injured in District of Columbia for purposes of long-arm statute, even though formal consummation of merger by shareholder vote occurred after warrant holder became resident; any possible tortious interference with warrant holder's contract

rights took place when tender offer and target corporation established terms of merger, and alleged breach of fiduciary duty could not have continued beyond holder's purchase of restricted shares. D.C. Code 1981, § 13-423(a), (a)(4). *Gandal v. Telemundo Group*, 997 F.2d 1561, 1993 U.S. App. LEXIS 18000 (C.A.D.C. 1993).

District Court for District of Columbia lacked personal jurisdiction over non-resident for-profit corporation that assisted medical students in obtaining medical residency positions, pursuant to provision of District of Columbia's long-arm statute allowing specific personal jurisdiction over defendants who caused tortious injury in the District, in action brought by non-profit corporation that conducted annual program to match students with residency program, alleging conspiracy to defraud, civil conspiracy, tortious interference, and trade secret misappropriation; non-profit failed to identify any tortious injury inflicted on it by for-profit in the District of Columbia. *Nat'l Resident Matching Program v. Elec. Residency LLC*, 720 F.Supp.2d 92, 2010 U.S. Dist. LEXIS 66582 (2010).

Former federal prisoner, who was denied placement in a halfway house while he was incarcerated in Minnesota, did not suffer injury in District of Columbia, as required to support exercise of personal jurisdiction over his former case manager in the District under the "causing tortious injury" provision of the District's long-arm statute. *Walton v. Fed. Bureau of Prisons*, 533 F.Supp.2d 107, 2008 U.S. Dist. LEXIS 7966 (2008).

Complaint by Palestinian residents of West Bank against Israeli officials, in connection with development of settlements, failed to allege facts that would support personal jurisdiction under tortious injury provision of District of Columbia long-arm statute, in that no Palestinian who suffered harm on American soil claimed to reside in District or to have suffered harm there, and, even if proper inquiry focused on United States generally, complaint did not allege persistent course of conduct in United States. *Doe I v. State of Israel*, 400 F.Supp.2d 86, 2005 U.S. Dist. LEXIS 27471 (2005).

To invoke "tortious injury" prong of District of Columbia long-arm statute, plaintiffs must show that the moving defendants either directly or through an agent caused tortious injury to plaintiffs in the District of Columbia by an act or omission in the District of Columbia. *Jung v. Ass'n of Am. Med. Colleges*, 300 F.Supp.2d 119, 2004 U.S. Dist. LEXIS 1826 (2004).

Subsection of District of Columbia long-arm statute conditionally conferring jurisdiction when nonresident defendant causes injury within district by act or omission outside district did not confer jurisdiction over corporate

defendant where plaintiff's injury was caused when pallet jack allegedly struck him in Virginia; plaintiff did not argue that defendant's alleged negligence caused him in any injury within district. D.C. Code 1981, § 13-423(a)(4). *Ross v. Product Dev. Corp.*, 736 F. Supp. 285, 1989 U.S. Dist. LEXIS 11858 (1989).

Where plaintiff purchased and consumed laxative in Arizona, suffered reaction there and was treated there, she could not maintain action against manufacturer in District of Columbia on theory that the tortious act caused tortious injury in the District, notwithstanding contention that she suffered extreme physical and mental injury on a continuing basis in the District as well as severe financial injury because physical injury prevented her from carrying on her business, since the "injuries" alleged in the District were actually descriptions of pecuniary losses, which were measures of such injuries. Fed.Rules Civ.Proc. rules 4(e), 60(b), 18 U.S.C.; D.C. Code §§ 13-421, 13-423(a)(4). *Leaks v. Ex-Lax, Inc.*, 424 F. Supp. 413, 1976 U.S. Dist. LEXIS 11671 (1976).

Mere fact that purchasers of stainless steel tubing used in West Virginia construction project may have been required to borrow funds from lenders in District of Columbia in order to replace allegedly defective tubing did not mean that purchasers had sustained "tortious injury" within District of Columbia so as to give federal court in District jurisdiction over suit by purchasers against manufacturers under "long-arm" statute. D.C. Code § 13-423(a)(4). *Norair Engineering Associates, Inc. v. Noland Co.*, 365 F. Supp. 740, 1973 U.S. Dist. LEXIS 11392 (1973).

— Minimum contacts, torts outside district.

Connection with the District of Columbia sufficient to authorize assertion of personal jurisdiction over a nonresident defendant can be demonstrated under the District's long-arm statute only by proving that the defendant has one of three types of contact with the district and that the connection at least evinces the minimum contacts with the District sufficient to satisfy traditional notions of fair play and substantial justice. D.C. Code § 13-423(a)(4). *Founding Church of Scientology v. Verlag*, 536 F.2d 429, 1976 U.S. App. LEXIS 8799 (C.A.D.C. 1976).

Actual injuries of which federal inmate complained in his civil rights action occurred in Oklahoma, Kansas, and Colorado, and not in District of Columbia, and therefore district court lacked personal jurisdiction over non-resident defendants pursuant to provisions of District of Columbia's long-arm statute providing for jurisdiction over non-resident defendant who caused tortious injury in District of Columbia by act or omission committed in District of

Columbia or outside District of Columbia. *Akers v. Watts*, 740 F.Supp.2d 83, 2010 U.S. Dist. LEXIS 100960 (2010).

District court did not have jurisdiction under the District of Columbia long-arm statute over probation officers who allegedly violated federal prisoner's rights under the Privacy Act, where officers worked and resided in Mississippi, and none of the alleged acts or omissions by the probation officers took place in the District of Columbia or had any effect in the District of Columbia. *Morris v. United States Prob. Servs.*, 723 F.Supp.2d 225, 2010 U.S. Dist. LEXIS 71441 (2010).

Under District of Columbia law, former law student's claims of fraud about anonymous grading systems and law school exams accrued, and three-year statute of limitations began to run, while student was enrolled at law schools; student had knowledge of the alleged fraud before graduation. *Richards v. Duke Univ.*, 480 F.Supp.2d 222, 2007 U.S. Dist. LEXIS 22864 (2007), affirmed by 2007 U.S. App. LEXIS 30275 (D.C. Cir. Aug. 27, 2007).

Florida accounting firm was not subject to personal jurisdiction in the District of Columbia under the "tortious injury" provision of the District's long-arm statute in investors' securities fraud action arising from statements it made in audited financial statements prepared for Florida corporation; financial statements were prepared by accounting firm in Florida, and its telephone calls to a corporate director in the District did not amount to an act or omission there. *Burman v. Phoenix Worldwide Indus.*, 437 F.Supp.2d 142, 2006 U.S. Dist. LEXIS 46070 (2006).

Federal district court in the District of Columbia lacked jurisdiction over defendants in action brought by former Washington State resident against Washington State and its agencies for their alleged "professional negligence" in handling his workers' compensation claim; defendant agencies did not solicit or transact business with the District, nor was there any action taken by defendants causing harm within the District, and since neither plaintiff nor defendants had any connection to the District and all tortious acts alleged by plaintiff occurred in the State of Washington while plaintiff was a resident of Washington State, plaintiff could not establish the requisite minimum contacts necessary to invoke the District's long-arm statute. D.C. Code 1981, § 13-423(a). *Marshall v. Labor & Indus.*, 89 F.Supp.2d 4, 2000 U.S. Dist. LEXIS 6125 (2000).

Because District of Columbia's tortious acts provision of long-arm statute did not reach outer limits of due process and district court had concluded that there were sufficient "plus factors" to meet statutory requisites, it followed that there were also sufficient minimum con-

tacts to satisfy due process. D.C. Code 1981, § 13-423(a)(4). *Blumenthal v. Drudge*, 992 F. Supp. 44, 1998 U.S. Dist. LEXIS 5606 (1998).

District of Columbia plaintiff, who brought diversity tort action against Maryland country club, failed to meet threshold prima facie showing of jurisdiction over defendant under District of Columbia long-arm statute authorizing a District of Columbia court to exercise personal jurisdiction over a person who both causes a tortious injury in the District by an act or omission outside the District and who has some other reasonable connection with the District where, even though some of defendant's members resided in the District, it did not solicit members in the District, was not incorporated in the District, maintained no office or other facilities in the District, did not pay District taxes, and did not derive any revenue from services rendered in the District. D.C. Code § 13-423(a)(4). *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913, 1980 U.S. Dist. LEXIS 16849 (1980).

Under District of Columbia new long-arm jurisdictional statute, which provides that a District of Columbia court may exercise personal jurisdiction over a person as to a claim arising from the person's causing tortious injury in the District of Columbia if he regularly does or solicits business or engages in any other persistent course of conduct in the District of Columbia, minimal contacts with the District should at least be continuing in character. D.C. Code § 13-423(a)(1, 4), (b). *Security Bank, N.A. v. Tauber*, 347 F. Supp. 511, 1972 U.S. Dist. LEXIS 12035 (1972).

Strength of a contact with a jurisdiction cannot be ignored and must be weighed along with continuity of contact in evaluating applicability of District of Columbia new long-arm jurisdictional statute which provides that a District of Columbia court may exercise personal jurisdiction over a person as to a claim arising from the person's causing tortious injury in the District of Columbia if he regularly does or solicits business or engages in any other persistent course of conduct in the District of Columbia. D.C. Code § 13-423(a)(1, 4), (b). *Security Bank, N.A. v. Tauber*, 347 F. Supp. 511, 1972 U.S. Dist. LEXIS 12035 (1972).

Defendant's use of district title company and a district bank did not sufficiently satisfy requirements of District of Columbia new long-arm jurisdictional statute, which provides that a District of Columbia court may exercise personal jurisdiction over a person as to a claim arising from the person's causing tortious injury in the District of Columbia if he regularly does or solicits business or engages in any other persistent course of conduct in the District of Columbia, in absence of evidence of regularity with which defendant allegedly engaged in this activity. D.C. Code § 13-423(a)(1, 4), (b). *Secu-*

ity Bank, N. A. v. Tauber, 347 F. Supp. 511, 1972 U.S. Dist. LEXIS 12035 (1972).

District court possessed sufficient personal jurisdiction over Interpol to impose sanctions for its six-year refusal to comply with Federal Rules of Civil Procedure, since Interpol's frequent contact and close relationship with Justice Department amply satisfied "minimum contacts" threshold, and plaintiff made strong prima facie showing of personal jurisdiction under District of Columbia long-arm statute. D.C. Code 1981, § 13-423(a)(4); U.S. Const. Amends. 5, 14. *Steinberg v. International Criminal Police Organization*, 103 F.R.D. 392, 1984 U.S. Dist. LEXIS 22363 (1984).

Mexican elevator repair company could not have anticipated being hauled into court in the District as required to assert personal jurisdiction under the long-arm statute as a result of entering into a contract with the American Embassy in Mexico for elevator repair work that was done entirely in Mexico, especially considering that the plaintiff was not a party to the contract, but was only an embassy employee. *Gonzalez v. Internacional de Elevadores, S.A.*, 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

Types of corporate business activities which might constitute sufficient contacts for assertion of in personam jurisdiction over nonresident corporate defendant include solicitation of sales by corporate agents in forum, advertising in forum, derivation of significant revenue from forum, plaintiff's residence in the forum, and forum state's interest in adjudicating the dispute. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

In determining in personam jurisdiction over nonresident defendant in products liability case, focus must be on whether defendant manufacturer or seller can reasonably foresee that it may be sued in forum state and analysis is not of the mere likelihood that a product will find its way into forum state. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

To sustain in personam jurisdiction over nonresident corporate defendant, if plaintiff's injury does not arise out of activity in forum state, other contacts between corporation and state must be fairly extensive before burden of defending suit there may be imposed upon corporation in order that traditional notions of fair play and substantial justice are not offended. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

Solely being licensed to practice medicine in the District of Columbia is insufficient as a basis for the D.C. Superior Court to exercise personal jurisdiction over defendant doctor. *Colclough v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, 121 WLR 189 (Super. Ct. 1992).

Court lacked jurisdiction over accident case arising in Maryland even though plaintiff moved into the District prior to filing suit, received medical treatment in the District for injuries sustained in the accident, and even though defendant commuted daily from Maryland to the District. *Jeancharles v. Harley*, 113 WLR 337 (Super. Ct. 1985).

— Revenue derived, torts outside district.

District of Columbia long-arm statute permitting jurisdiction where defendant derives substantial revenue from goods used in District does not require that goods be sold in District, and fact that sales are indirect is irrelevant. D.C. Code § 13-423(a)(4). *Gatewood v. Fiat, S. p. A.*, 617 F.2d 820, 1980 U.S. App. LEXIS 21116 (C.A.D.C. 1980).

On record, both Italian auto manufacturer and its United States distributor derived substantial revenue from sale of goods used in District of Columbia and, meeting other requirements of its long-arm statute for jurisdiction, were subject to jurisdiction in the district. D.C. Code § 13-423(a)(4). *Gatewood v. Fiat, S. p. A.*, 617 F.2d 820, 1980 U.S. App. LEXIS 21116 (C.A.D.C. 1980).

Small percentage of sales of corporate giant may prove substantial in absolute sense, for purposes of application of long-arm statute. D.C. Code § 13-423(a)(4). *Gatewood v. Fiat, S. p. A.*, 617 F.2d 820, 1980 U.S. App. LEXIS 21116 (C.A.D.C. 1980).

In order to show the reasonable connection necessary for assertion of long-arm jurisdiction over a defendant on the basis of its having derived substantial income for goods used or consumed in the jurisdiction, court must look both at the absolute amount of revenues and the percentage of total revenues represented by activities in the jurisdiction. D.C. Code § 13-423(a)(4). *Founding Church of Scientology v. Verlag*, 536 F.2d 429, 1976 U.S. App. LEXIS 8799 (C.A.D.C. 1976).

Prevalence of tow truck winch manufacturer's products constituted "commercial impact" sufficient to meet substantial revenue test of District of Columbia long-arm statute and, thus, to subject manufacturer to personal jurisdiction within District for claim brought by injured winch operator where manufacturer claimed in its advertising that eight out of ten tow trucks used its winches, manufacturer did not retract statement in light of litigation, and there was no showing that claim was less applicable to District than rest of country. D.C. Code 1981, § 13-423(a)(4). *Fogle v. Ramsey Winch Co.*, 774 F. Supp. 19, 1991 U.S. Dist. LEXIS 13165 (1991).

Jurisdiction pursuant to District of Columbia long-arm statute existed over corporate defendant, which achieved three percent of its sales in the District, on claim in which plaintiff

alleged that she suffered loss of consortium which occurred in her marital domicile in the District. D.C. Code 1981, § 13-423(a)(4). *Masterson-Cook v. Criss Bros. Iron Works, Inc.*, 722 F. Supp. 810, 1989 U.S. Dist. LEXIS 12467 (1989), dismissed by 741 F. Supp. 985, 1990 U.S. Dist. LEXIS 10601 (D.D.C. 1990).

Under statute providing for in personam jurisdiction over person causing tortious injury in District of Columbia by act or omission outside if he, inter alia, derives substantial revenue from goods used or consumed, or services rendered, in District, all that is required is that manufacturer derive substantial revenue from production and sale of goods and that goods be used in District. D.C. Code § 13-423(a)(4). *Liberty Mut. Ins. Co. v. American Pecco Corp.*, 334 F. Supp. 522, 1971 U.S. Dist. LEXIS 10584 (1971).

Where overseas corporation sold to its exclusive American distributor approximately 18 cranes per year, and one was used in District of Columbia, there was substantial revenue from production and sale of goods and goods were used in District, and there was basis for in personam jurisdiction under long-arm statute. D.C. Code § 13-423(a)(4). *Liberty Mut. Ins. Co. v. American Pecco Corp.*, 334 F. Supp. 522, 1971 U.S. Dist. LEXIS 10584 (1971).

Derivation of three million dollars of revenue in District of Columbia by nonresident corporate defendant could not sustain exercise of in personam jurisdiction in District of Columbia where corporation's contacts with forum were not both continuous and substantial, and cause of action was unrelated to any corporate activity in forum. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

— Solicitation of business, torts outside district.

Under District of Columbia law, Italian manufacturer's direct solicitation of sales in United States did not amount to tortious interference with distributor's business relationships, where manufacturer's actions either breached parties' contract, or involved entities with which distributor had not established relationships. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 753 F.Supp.2d 141, 2010 U.S. Dist. LEXIS 128188 (2010).

Italian manufacturer regularly did and solicited business in District of Columbia through its wholly-owned subsidiary and alter ego, and thus was subject to specific personal jurisdiction in District in distributor's action alleging that manufacturer tortiously interfered with its business by attempting to hire its employees and directly soliciting sales from its business opportunities, even if subsidiary was not active during relevant time period, where manufacturer registered subsidiary in District in order to conduct business in District, and alleged

injuries occurred in District. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 753 F.Supp.2d 141, 2010 U.S. Dist. LEXIS 128188 (2010).

District of Columbia resident, who alleged that he suffered serious ailments from anthrax inoculations he received while in military, did not transact business with Michigan vaccine manufacturer to obtain vaccine for personal use, and thus, federal court located in District of Columbia did not have specific jurisdiction, pursuant to transacting business prong of District's long-arm statute, over manufacturer in citizen's products liability action; manufacturer's advertisements did not solicit residents of District to purchase vaccine or otherwise transact business with manufacturer, and all of its advertisements emphasized government's limited allocation of anthrax vaccines to first responders. *Savage v. Bioport, Inc.*, 460 F.Supp.2d 55, 2006 U.S. Dist. LEXIS 78144 (2006).

Florida accounting firm's 1,326 telephone calls to the District of Columbia did not constitute a persistent course of conduct in the District of Columbia for purposes of exercising personal jurisdiction over the firm under the District's long-arm statute, absent evidence that the telephone calls were related to doing or soliciting business in the District. *Burman v. Phoenix Worldwide Indus.*, 437 F.Supp.2d 142, 2006 U.S. Dist. LEXIS 46070 (2006).

Under "transacting any business" clause of District of Columbia's long-arm statute, New York charitable organization was subject to personal jurisdiction in District; advertisement was placed in District newspaper with organization's approval inviting readers to donate funds, and organization had Internet home page that solicited donations and provided toll-free telephone number for donors. D.C. Code 1981, § 13-423(a)(4). *Heroes, Inc. v. Heroes Found.*, 958 F. Supp. 1, 1996 U.S. Dist. LEXIS 20660 (1996).

Despite fact that defendants' guns entered the jurisdiction illegally, "tortious injury" provision of District of Columbia long-arm statute authorized assertion of jurisdiction over nonresident handgun manufacturer and distributor, who had no officers or agents and were not licensed to do business in the District but who took initiative in instituting a national marketing scheme to obtain widest possible market for their products, in suit seeking to recover for injuries incurred by victims of attempted assassination of President Reagan. D.C. Code 1981, § 13-423(a)(4). *Delahanty v. Hinckley*, 686 F. Supp. 920, 1986 U.S. Dist. LEXIS 23242 (1986), affirmed by 900 F.2d 368, 283 U.S. App. D.C. 384, 1990 U.S. App. LEXIS 5411 (1990).

Michigan corporation's affirmative act of advertising its suburban retail stores through District of Columbia media constituted "transacting business" within District within mean-

ing of District long-arm statute and constituted "minimum contacts" with the District. D.C. Code 1981, § 13-423(a)(1), (b); U.S.C. Const.Amends. 5, 14. *Bayles v. K-Mart Corp.*, 636 F. Supp. 852, 1986 U.S. Dist. LEXIS 24112 (1986).

Nonresident grocery corporation's extensive advertising in major circulation District of Columbia newspaper, designed to target and attract District residents to nearby out-of-District stores, constituted "transacting any business" under District long-arm statute. D.C. Code 1981, § 13-423(a)(1). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

District of Columbia courts had personal jurisdiction over foreign corporation which extensively advertised its grocery stores in District's major circulation newspaper and other communications media, in a slip and fall case in which patron, a District resident, alleged that she suffered personal injuries in one of corporation's Maryland stores located near District's borders; corporation, through its extensive advertising activity in a major District newspaper, purposefully solicited District residents as customers for its nearby Maryland and Virginia stores and thus transacted business in District, and because patron's claim had a discernible relationship to corporation's advertising, corporation could have reasonably anticipated being hauled into court to defend against a personal injury suit brought by a District resident. U.S. Const.Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

Solicitation of sales, unlike the purchasing of goods and services, can alone be sufficient to support in personam jurisdiction over nonresident defendant. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

Where cause of action did not arise in District of Columbia, in personam jurisdiction over nonresident corporate defendant could not be based on solicitation by corporation's detail men in District of Columbia where solicitation was undeniably continuous, but visits were so infrequent that they were not substantial. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

In determining in personam jurisdiction over nonresident defendant, advertising in forum state is significant only when pervasive or when cause of action arises in forum state. *Hughes v. A.H. Robins Co.*, 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

Where nonresident corporate defendant's advertising in District of Columbia was only intermittent and cause of action did not arise in District of Columbia, there were no sufficient contacts to establish in personam jurisdiction.

Hughes v. A.H. Robins Co., 490 A.2d 1140, 1985 D.C. App. LEXIS 372 (1985).

The longstanding case law in this jurisdiction, albeit binding only on the federal courts, provides that for purposes of paragraph (a)(3) of this section, an act or omission which occurs during a phone conversation is deemed to occur where the defendant is located. *Etchebarne-Bourdin v. Bourdin*, 124 WLR 2261 (Super. Ct. 1996).

Phone call in which the defendant prosecuting attorney solicited plaintiff's presence in New York for the limited purpose of proceeding with a criminal matter in which the plaintiff does not fall within the context of "transacting business" as construed by subsection (a)(1). *Sindram v. Relin*, 116 WLR 2093 (Super. Ct. 1988).

Defendant drug store was subject to the jurisdiction of the court where the defendant's more than 25 stores exist in northern Virginia, and a majority are less than five miles from the District of Columbia and the drug store not only advertises in the District of Columbia for customers through both newspapers published in the District and in the District of Columbia "Yellow Pages", but has calculatedly and purposely used in its advertising listings, telephone book listings and store displays terminology which makes it indistinguishable from the stores of a Maryland corporation which owns and operates 35 retail drug stores within the District of Columbia. *Sindram v. Relin*, 116 WLR 2093 (Super. Ct. 1988).

The defendant's placing of a long distance phone call requesting the plaintiff to appear in a pending criminal action in which plaintiff is the complainant and the defendant is the prosecuting attorney does not constitute a deliberate and voluntary association with the forum from which defendant should reasonably anticipate being hauled into court, the defendant's conduct did not consist of purposefully availing himself of the privilege of conducting business in the forum state, the defendant does not have sufficient contacts with the District of Columbia for the purpose of maintaining this action and exercising personal jurisdiction over the defendant would violate due process. *Sindram v. Relin*, 116 WLR 2093 (Super. Ct. 1988).

Torts within District.

District of Columbia's long-arm statute requires that tortious act be committed within District, and fact that injury occurred within District is insufficient to confer personal jurisdiction in federal court. D.C. Code 1981, § 13-423(a)(3). *Moncrief v. Lexington Herald-Leader Co.*, 807 F.2d 217, 1986 U.S. App. LEXIS 34784 (C.A.D.C. 1986).

Exercise of personal jurisdiction over federal prison warden, who was non-resident, in her individual capacity under District of

Columbia's long-arm statute, in prisoner's action under §§ 1983 and Administrative Procedure Act, was not appropriate; warden did not transact any business or contracts to supply services in District, warden did not cause any tortious injury in District, prisoner, who was incarcerated in another state, suffered no injury in District, and warden could not have reasonably anticipated being hauled into court in District. *Ballard v. Holinka*, 601 F.Supp.2d 110, 2009 U.S. Dist. LEXIS 15759 (2009).

Absent showing that girlfriend, a citizen of Russian Federation, did or solicited business, engaged in any other persistent course of conduct, or derived substantial revenue from goods used or consumed, or services rendered, in the District of Columbia, provision of District of Columbia long-arm statute, granting personal jurisdiction over nonresident defendant who causes tortious injury in the District of Columbia by an act or omission outside the District of Columbia, did not apply to support exercise of personal jurisdiction in District over girlfriend in connection with ex-boyfriend's fraud claims. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

Requirement of District of Columbia long-arm statute that the defendant has committed a tortious act in the District with injury occurring in the District was met by evidence of defendant's close relationship with another defendant who had his principal place of business in the District and by evidence that the other defendant operated from his office in the District and improperly withdrew over \$3,000 of funds from corporation in order to pay for repairs to defendant's automobile. D.C. Code 1981, § 13-423(a)(3). *Avianca, Inc. v. Corriea*, 705 F. Supp. 666, 1989 U.S. Dist. LEXIS 1397 (1989), affirmed sub nomine *Avianca, Inc. v. Harrison*, 1995 U.S. App. LEXIS 28834 (D.C. Cir. Oct. 17, 1995).

Act of allegedly misrepresenting corporation's finances in financial statements occurred in state where statements were written, rather than in state where statements were understood, for purposes of determining whether personal jurisdiction existed under the long-arm statute of the District of Columbia over partner in accounting firm that prepared the financial statements. Fed.R.Civ.Proc. Rule 4(e), 18 U.S.C.; D.C. Code 1981, § 13-423(a)(3). *National Bank of Washington v. Mallery*, 669 F. Supp. 22, 1987 U.S. Dist. LEXIS 8017 (1987).

Under District of Columbia long-arm statute, it is not enough to show that injury occurred in the District; the act causing injury also must be performed in the District. D.C. Code 1981, §§ 13-423, 13-423(a)(3). *Moncrief v. Lexington Herald-Leader Co.*, 631 F. Supp. 772, 1985 U.S.

Dist. LEXIS 14758 (1985), affirmed by 807 F.2d 217, 257 U.S. App. D.C. 72, 1986 U.S. App. LEXIS 34784, 13 Media L. Rep. (BNA) 1762 (1986).

Where only act of Maryland country club, a theft victim, in placing a call to report the theft occurred outside District of Columbia, and where the club, which exercised no control over District of Columbia's police officers, did not designate them as its agents, federal court for District of Columbia, in arrested former employee's action for false arrest, false imprisonment, malicious prosecution, and intentional infliction of emotional distress, did not have personal jurisdiction over the club based on District of Columbia statute authorizing jurisdiction arising from a person's causing tortious injury in the District of Columbia by an act or omission in the District. D.C. Code § 13-423(a)(3). *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913, 1980 U.S. Dist. LEXIS 16849 (1980).

Allegations that two of the defendants brought plaintiff into the District of Columbia against his will and that plaintiff was involuntarily admitted to a hospital during a third defendant's tenure as administrator was sufficient to provide sufficient basis for district court's exercise of competence over those defendants under authority of the District of Columbia's long-arm statute. D.C. Code §§ 13-423, 13-423(a)(1, 3), (b); 18 U.S.C. § 1391(e). *Logiurato v. Action*, 490 F. Supp. 84, 1980 U.S. Dist. LEXIS 13108 (1980).

Personal jurisdiction over defendant under District of Columbia long-arm statute was proper where action was based on alleged injuries to resident plaintiff's credit rating and to her mental and emotional well-being notwithstanding nonresident defendant's contention that personal jurisdiction was improper because the tort occurred in Maryland. D.C. Code § 13-423(a)(3, 4). *Aiken v. Lustine Chevrolet, Inc.*, 392 F. Supp. 883, 1975 U.S. Dist. LEXIS 13158 (1975).

Two phone calls made by defendant, a Florida resident, into District of Columbia did not provide a jurisdictional basis under District of Columbia new long-arm jurisdictional statute which provides that a District of Columbia court may exercise personal jurisdiction over a person as to a claim for relief arising from the person's causing tortious injury in the District of Columbia by an act or omission in the District of Columbia, even if fraudulent misrepresentations were made by defendant to plaintiff during those conversations, in that these calls from Florida were act of defendant in Florida, and not "an act or omission in the District of Columbia." D.C. Code § 13-423(a)(3). *Security Bank, N. A. v. Tauber*, 347 F. Supp. 511, 1972 U.S. Dist. LEXIS 12035 (1972).

Where plaintiff brought action against defendant, a resident of New York, for alienation of

affection, loss of consortium and criminal conversation, no jurisdiction could be asserted over defendant under “long arm” statute, as causes of action for alienation of affection and criminal conversation were abolished before commencement of the suit, and thus plaintiff failed to allege “tortious injury in the District” as required by “long arm” statute. D.C. Code § 13-423(a)(3, 4). *Bernay v. Sales*, 424 A.2d 123, 1980 D.C. App. LEXIS 411 (1980), vacated by 435 A.2d 398, 1981 D.C. App. LEXIS 363 (D.C. 1981).

Transacting business.

— Communications as contacts, transacting business.

Even if German corporation issued press releases discussing its United States franchisee’s restaurants in the District of Columbia, it did not “transact business” in the District, so as to support exercise of specific personal jurisdiction under District of Columbia’s long-arm statute in copyright infringement action, where the corporation did not actively advertise in the District of Columbia, either on its website or through local newspapers, and the press releases did not specifically target District of Columbia residents as opposed to potential customers located elsewhere in the United States and around the world. *Rundquist v. Vapiano SE*, 798 F.Supp.2d 102, 2011 U.S. Dist. LEXIS 78781 (2011).

German corporation did not transact business in the District of Columbia through its interactive website, which allegedly allowed customers to place meal orders with restaurants it franchised, including those in District of Columbia, so as to support exercise of specific personal jurisdiction under District of Columbia’s long-arm statute in copyright infringement action, where website gave users “click-through” access to website of its United States franchisee, and meal ordering functionality for restaurants based in the United States appeared to be on that website. *Rundquist v. Vapiano SE*, 798 F.Supp.2d 102, 2011 U.S. Dist. LEXIS 78781 (2011).

Italian manufacturer’s phone calls and emails to distributor’s employees in District of Columbia did not constitute acts in District, for purposes of long-arm statute provision conferring personal jurisdiction for tortious injuries caused by “act or omission in the District of Columbia,” even if alleged injury arising from manufacturer’s allegedly tortious interference with distributor’s contracts with its employees occurred in District, where calls and emails originated from Italy. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 753 F.Supp.2d 141, 2010 U.S. Dist. LEXIS 128188 (2010).

Federal district court in District of Columbia did not have specific personal jurisdiction over

non-residents under District of Columbia long-arm statute on basis of libelous email that had been sent to plaintiff serviceman’s commanding officer, where plaintiff did not allege that defendants had rendered services or derived revenue from goods used or consumed in District and plaintiff did not allege that defendants themselves had regularly conducted or solicited business in District and defendants did not create “persistent course of conduct” through occasional travel to District or by telephone calls to District, regardless of calls’ frequency or nature. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 753 F.Supp.2d 141, 2010 U.S. Dist. LEXIS 128188 (2010).

Federal district court in District of Columbia did not have specific personal jurisdiction over non-residents under District of Columbia long-arm statute on basis of libelous email that had been sent to plaintiff serviceman’s commanding officer, where complaint did not allege, inter alia, that defendant non-residents had created and sent that email at issue and plaintiff did not explain how he knew that email had been sent from District and he did not support that assertion in an affidavit and defendants disavowed that allegation by affidavit. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 753 F.Supp.2d 141, 2010 U.S. Dist. LEXIS 128188 (2010).

District Court for District of Columbia lacked personal jurisdiction over non-resident for-profit corporation that assisted medical students in obtaining medical residency positions, pursuant to provision of District of Columbia’s long-arm statute allowing specific personal jurisdiction over defendants who transacted business in District, in action brought by non-profit corporation that conducted annual program to match students with residency program, alleging conspiracy to defraud, civil conspiracy, tortious interference, and trade secret misappropriation; claims did not arise from for-profit’s alleged conduct of providing services to residents of District and sending faxes and e-mails to District residency programs, and for-profit’s alleged conduct of having its owner enter into form contract to access non-profit’s online information did not amount to transacting business in District. *Nat’l Resident Matching Program v. Elec. Residency LLC*, 720 F.Supp.2d 92, 2010 U.S. Dist. LEXIS 66582 (2010).

Telephone calls placed by agent of defendant corporation into District of Columbia from elsewhere did not constitute “transacting business” in the District of Columbia under District of Columbia subsection of long-arm statute that governed personal jurisdiction based upon conduct of agent, and thus court could not assert specific personal jurisdiction over corporation based on such contacts alone. *FC Inv. Group LC v. IFX Mkts., Ltd.*, 479 F.Supp.2d 30, 2007 U.S. Dist. LEXIS 7919 (2007), affirmed by 529 F.3d

1087, 381 U.S. App. D.C. 383, 2008 U.S. App. LEXIS 13312 (2008).

In action brought by consumers against officers and employees of defunct advertising company, stemming from receipt of unwanted facsimile transmissions, district court lacked personal jurisdiction over non-resident employee under District of Columbia long-arm statute; although employee allegedly facilitated company's operation, was fully aware that company was sending unsolicited faxes, and knew that company database contained phone numbers with District of Columbia area code, such contacts did not constitute purposeful availment of forum. *Kopff v. Battaglia*, 425 F.Supp.2d 76, 2006 U.S. Dist. LEXIS 13638 (2006).

Three telephone calls and mailings which nonresident broker made to nonresident seller's attorney in the District of Columbia in order to secure payment it believed due under the brokerage agreement pertaining to sale of New Jersey television station did not constitute "transacting business" within meaning of District of Columbia long-arm statute; furthermore, broker's unilateral actions of employing counsel in the District of Columbia could not confer personal jurisdiction on broker. *Brunson v. Kalil & Co.*, 404 F.Supp.2d 221, 2005 U.S. Dist. LEXIS 40207 (2005).

Fact that mail and wire communications may have occurred between plaintiff in District of Columbia and nonresident defendant does not, standing alone, provide basis for jurisdiction under transacting business provision of District of Columbia long-arm statute. D.C. Code 1981, § 13-423(a)(1). *COMSAT Corp. v. Finshipyards S.A.M.*, 900 F. Supp. 515, 1995 U.S. Dist. LEXIS 14701 (1995).

District of Columbia federal court lacked jurisdiction over suit over fraud action against attorneys, based on giving of allegedly fraudulent opinions that loan applicants were not insolvent, that warranties in loan agreement were true, that loan agreements conveyed valid lien interests in assets of applicant, and that receivables granted as collateral would be free of liens and encumbrances; attorney's did not practice or maintain offices in district, letters were written in furtherance of attorneys' representation of debtors, and attorneys had no contact with District of Columbia other than some telephone calls. D.C. Code 1981, § 13-423. *Bank of Cape Verde v. Bronson*, 869 F. Supp. 21, 1994 U.S. Dist. LEXIS 17094 (1994).

Telephone calls and mailings to Washington, District of Columbia constituted "transacting business" under "transacting business" section of District's long-arm statute. D.C. Code 1981, § 13-423(a)(1). *Dooley v. United Technologies Corp.*, 786 F. Supp. 65, 1992 U.S. Dist. LEXIS 2838 (1992).

United States District Court for District of Columbia lacked personal jurisdiction over claim for damages stemming from alleged breach of written employment contract between Wisconsin resident and Florida-based corporation and involving activities occurring in Florida, Central America, and Wisconsin; plaintiffs' stated belief that "nerve center" of operation was located in District of Columbia and references to Iran-Contra report were insufficient to satisfy due process or requirements of District's long-arm statute. D.C. Code 1981, § 13-423; U.S. Const. Amend. 14. *Hasenfus v. Corporate Air Services*, 700 F. Supp. 58, 1988 U.S. Dist. LEXIS 12765 (1988).

For defendants' transaction of business within District of Columbia to provide basis for exercise of personal jurisdiction, plaintiff must demonstrate not only that defendant transacted business in the District, but also that claims pursued by plaintiff arose out of business transacted in the District. D.C. Code 1981, § 13-423(a)(4), (b); *Mineral Lands Leasing Act*, § 1 et seq., 30 U.S.C. § 181 et seq. *Naartex Consulting Corp. v. Watt*, 542 F. Supp. 1196, 1982 U.S. Dist. LEXIS 9566 (1982), affirmed by 722 F.2d 779, 232 U.S. App. D.C. 293, 1983 U.S. App. LEXIS 14944, 38 Fed. R. Serv. 2d (Callaghan) 332, 82 Oil & Gas Rep. 161 (1983).

Telephone call patient made to doctor, who practiced outside the District of Columbia, could not serve as a basis for jurisdiction over doctor under the long-arm statute and remain consistent with the limits of due process. *Etchebarne-Bourdin v. Radice*, 982 A.2d 752, 2009 D.C. App. LEXIS 539 (2009).

If corporation that operated movie theater in Virginia engaged in advertising that reached into the District of Columbia (D.C.), it had fair warning that it could be sued in the home jurisdiction of the customers it courted, such that exercise of personal jurisdiction by D.C. court over that nonresident corporation in negligence action by patron who was allegedly injured at theater would be permissible under Due Process Clause and long-arm statute. *Jackson v. Loews Wash. Cinemas, Inc.*, 944 A.2d 1088, 2008 D.C. App. LEXIS 111 (2008).

Corporate operator of movie theater in Virginia, where injuries giving rise to negligence action allegedly occurred, did not transact business within District of Columbia (D.C.), as necessary for exercise of personal jurisdiction over nonresident operator, based on placement by operator's parent corporation of advertisements in D.C. newspaper that showed movies playing at theaters including that one. *Jackson v. Loews Wash. Cinemas, Inc.*, 944 A.2d 1088, 2008 D.C. App. LEXIS 111 (2008).

Contract language that required Mexican elevator repair company to submit to federal jurisdiction in the District for disputes that arose under repair contract with the American

Embassy in Mexico did not justify an assertion of personal jurisdiction over company by the local courts in embassy employee's personal injury action. *Gonzalez v. Internacional de Elevadores, S.A.*, 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

— Connection with injury, transacting business.

Business that nonresident employer was "transacting" in District of Columbia did not relate to discharged employee's employment discrimination claims, within meaning of state's specific jurisdiction long-arm statute, in action alleging retaliation and wrongful termination, since employee had been hired solely to work on contract for services in State of Virginia, and alleged discriminatory conduct had all taken place in Virginia. *McDaniel v. FEDITC LLC*, 825 F.Supp.2d 157, 2011 U.S. Dist. LEXIS 133103 (2011).

Non-resident members of Broadcasting Board of Governors transacted business in District of Columbia, and business had strong nexus to contractor's claims against Board members, because members' alleged involvement in decision to terminate contract formed basis for retaliation and discrimination claims, and thus court had personal jurisdiction over members. *Navab-Safavi v. Broad. Bd.*, 650 F.Supp.2d 40, 2009 U.S. Dist. LEXIS 79579 (2009), affirmed by, remanded by 637 F.3d 311, 394 U.S. App. D.C. 377, 2011 U.S. App. LEXIS 3868, 31 I.E.R. Cas. (BNA) 1542, 39 Media L. Rep. (BNA) 1417 (2011).

Because a court in the District of Columbia may exercise specific jurisdiction over a non-resident defendant only for a claim for relief arising from the specific acts enumerated in the long-arm statute, a plaintiff's jurisdictional allegations must arise from the same conduct of which it complains; the claim itself must have arisen from the business transacted in the District of Columbia or there is no jurisdiction. *FC Inv. Group LC v. IFX Mkts., Ltd.*, 479 F.Supp.2d 30, 2007 U.S. Dist. LEXIS 7919 (2007), affirmed by 529 F.3d 1087, 381 U.S. App. D.C. 383, 2008 U.S. App. LEXIS 13312 (2008).

Sending of letter by New York hospital where physician trained to Department of Health and Human Services did not subject hospital to jurisdiction of courts in the District of Columbia, pursuant to District of Columbia long-arm statute, in action brought by physician after her medical license was suspended. *De Jesus Baltierra v. W. Va. Bd. of Med.*, 253 F.Supp.2d 9, 2003 U.S. Dist. LEXIS 5171 (2003), affirmed by 2004 U.S. App. LEXIS 11279 (D.C. Cir. June 7, 2004).

Non-profit corporation principally financed by Department of Energy (DOE) was not subject to personal jurisdiction in District of Co-

lumbia under transacting business provision of long-arm statute, in action challenging DOE's proposed environmental cleanup of nuclear weapons facility; corporation's business visits with government officials within District were not related to leases and subleases between DOE and corporation for property at issue. D.C. Code 1981, § 13-423(a)(1). *Oil, Chem. & Atomic Workers Int'l Union v. Pena*, 18 F.Supp.2d 6, 1998 U.S. Dist. LEXIS 12434 (1998), affirmed by 214 F.3d 1379, 341 U.S. App. D.C. 466, 2000 U.S. App. LEXIS 15692, 51 Env't Rep. Cas. (BNA) 1349, 30 Env'tl. L. Rep. 20754 (2000).

Requirement under of District of Columbia long-arm statute that plaintiff's claim must have arisen from defendant's business in district is not satisfied by allegation that plaintiff's claim arose from same type of business. D.C. Code 1981, § 13-423(a)(1). *Ross v. Product Dev. Corp.*, 736 F. Supp. 285, 1989 U.S. Dist. LEXIS 11858 (1989).

Under District of Columbia long-arm statute focusing on a defendant's transacting business within the District, suit must arise from or have nexus with claim asserted; however, once claim is related to acts in the District, the statute does not require that scope of the claim be limited to activity within the District. D.C. Code 1981, § 13-423(a)(1). *Chrysler Corp. v. General Motors Corp.*, 589 F. Supp. 1182, 1984 U.S. Dist. LEXIS 16318 (1984).

Since plaintiff did not allege that conduct of intrauterine contraceptive device manufacturer which gave rise to her injury was related to manufacturer's contacts with the District of Columbia, court could not assert long-arm jurisdiction pursuant to statute authorizing such jurisdiction over a person transacting any business in the District of Columbia. D.C. Code 1973, § 13-423(a)(1). *La Brier v. A.H. Robins Co.*, 551 F. Supp. 53, 1982 U.S. Dist. LEXIS 16747 (1982).

Nexus requirement of District of Columbia long-arm statute operates as a due process check on reach or scope of the "transacting business" provision of long-arm statute. U.S.C. Const.Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

Personal jurisdiction under long-arm statute exists over persons transacting business in District of Columbia only if claim arises from their contact with District. D.C. Code 1981, § 13-423(a)(1). *Everett v. Nissan Motor Corp.*, 628 A.2d 106, 1993 D.C. App. LEXIS 171 (1993).

Superior court did not have personal jurisdiction under long-arm statute in suit against union organization, with headquarters in Maryland, by former employee seeking retirement "gift" pursuant to organization's custom and practice, even though organization's headquarters were located in District of Columbia

for most of the time employee was in organization's employ and though, after relocation, employee continued to conduct organization's business in the District, where the alleged implied-in-fact "gift" contract was entered into in Maryland after organization relocated to Maryland. D.C. Code 1981, §§ 13-423, 13-423(a)(1), (b); U.S. Const. Amends. 5, 14. *Trerotola v. Cotter*, 601 A.2d 60, 1991 D.C. App. LEXIS 343 (1991).

The jurisdiction conferred by the long-arm statute is restricted to claims arising from the particular transaction of business carried out in the District of Columbia by the nonresident defendant. D.C. Code § 13-423; U.S. Const. Amend. 14. *Berwyn Fuel, Inc. v. Hogan*, 399 A.2d 79, 1979 D.C. App. LEXIS 311 (1979).

There was no agency relationship or any policy or pattern of conduct on which to predicate a finding that a doctor in Maryland, through referrals from nurses in Washington, D.C., was transacting business in the District of Columbia. *Colclough v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, 121 WLR 189 (Super. Ct. 1992).

— Contacts within scope of employment, transaction business.

Website operator, who alleged that scandalous book regarding President of United States contained false and defamatory statements about him and his website, failed to make prima facie showing that nonresident writer of book's foreword regularly did or solicited business in District of Columbia, engaged in any other persistent course of conduct in District, or derived substantial revenue from goods used or consumed, or services rendered, in District, as required to establish personal jurisdiction over writer under District's long-arm statute in action alleging libel, false light invasion/misappropriation of privacy, and business disparagement. *Parisi v. Sinclair*, 806 F.Supp.2d 93, 2011 U.S. Dist. LEXIS 94456 (2011), dismissed by 845 F. Supp. 2d 215, 2012 U.S. Dist. LEXIS 25364, 40 Media L. Rep. (BNA) 1396 (D.D.C. 2012).

Former employees failed to allege sufficient facts demonstrating that their claims against corporation and its co-owners for unpaid wages under Fair Labor Standards Act (FLSA) arose from corporation's business transactions or contracts in District of Columbia as required by District's long-arm statute or that corporation maintained continuous and significant contacts with District as required for exercise of personal jurisdiction over corporation in comportment with Due Process, and venue was thus improper in District on the basis that corporation and co-owners all resided in Virginia and that corporation was also resident of District. *Shay v. Sight & Sound Sys.*, 668 F.Supp.2d 80, 2009 U.S. Dist. LEXIS 104053 (2009).

Nonresident federal officials working in various facilities for Bureau of Prisons (BOP), headquartered in District of Columbia, were not subject to personal jurisdiction, under District of Columbia's long-arm statute, in former prisoner's suit claiming constitutional violations related to his medical treatment, since employment with BOP did not constitute transacting business with BOP headquarters, and prisoner's alleged injury occurred while he was incarcerated in North Carolina. *Scinto v. Fed. Bureau of Prisons*, 608 F.Supp.2d 4, 2009 U.S. Dist. LEXIS 26508 (2009), affirmed by 352 Fed. Appx. 448, 2009 U.S. App. LEXIS 24681 (D.C. Cir. 2009), dismissed by 2011 U.S. Dist. LEXIS 148389 (E.D.N.C. Dec. 27, 2011).

Limited contacts that non-resident company executives had with District of Columbia were not "separate from and in addition to" employee's allegedly unlawful termination, and thus tortious injury subsection of District of Columbia long-arm statute did not authorize personal jurisdiction over executives in former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. *D'Onofrio v. SFX Sports Group, Inc.*, 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

Contacts of non-resident company executives with District of Columbia were in the course of employment, rather than based on personal contacts, and thus subsection of District of Columbia long-arm statute allowing personal jurisdiction over person transacting business in District did not authorize personal jurisdiction over executives in female former employee's discrimination action against employer and executives alleging violation of District of Columbia Human Rights Act, District of Columbia Family Medical Leave Act and Equal Pay Act. *D'Onofrio v. SFX Sports Group, Inc.*, 534 F.Supp.2d 86, 2008 U.S. Dist. LEXIS 11418 (2008).

— Contracts as contacts, transacting business.

Former employee's allegation that employer had offices in District of Columbia did not establish that District of Columbia had personal jurisdiction over employer under District of Columbia's long-arm statute; employee identified no business transaction or service contract in District of Columbia, he identified no act which caused tortious injury in District of Columbia, and employee presented no office address for employer in District of Columbia or facts establishing that the offices regularly did business in District of Columbia. *Atwal v. Lawrence Livermore Nat'l Sec., LLC*, 786 F.Supp.2d 323, 2011 U.S. Dist. LEXIS 54593 (2011).

Swedish law firm, its managing partner, and “of counsel” attorney “transacted business” in District of Columbia, as was required for exercise of personal jurisdiction over firm and its attorneys in action brought against them by Swedish scientist and corporation, of which he was managing director and sole shareholder, for claims arising from their improper representation in numerous patent infringement actions; firm and its attorneys had regular communications into District of Columbia in regard to scientist’s representation, business meetings were conducted in District, firm contracted with law firm in District of Columbia to assist with representation of scientist and his corporation, contract was ultimately performed in District by filing patent infringement lawsuit, and thus firm’s contractual activities had effect in District. *Atwal v. Lawrence Livermore Nat’l Sec., LLC*, 786 F.Supp.2d 323, 2011 U.S. Dist. LEXIS 54593 (2011).

Contacts that municipal housing authority in Louisiana had with District of Columbia, of meeting with federal officials in Washington, D.C. and receiving federal funding, were uniquely governmental activities, and thus they were insufficient under due process clause to establish personal jurisdiction due to application of “government contacts” exception to District of Columbia long-arm statute in action against housing authority, seeking damages for breach of contract, unjust enrichment, and negligent administration of contract from housing authority. *Fuentes-Fernandez & Company, PSC v. Caballero & Castellanos, PL*, 770 F.Supp.2d 277, 2011 U.S. Dist. LEXIS 28586 (2011).

Subcontractor’s alleged breach of subcontract did not subject it to personal jurisdiction in District of Columbia under provisions of District of Columbia’s long-arm statute allowing for jurisdiction over defendants transacting business in District of Columbia and contracting to supply services in District of Columbia, given absence of evidence that subcontractor solicited business relationship or that contract, which specifically indicated that subcontractor would perform work at its offices in California, called for performance of work within District of Columbia. *Knowledgeplex, Inc. v. Metonymy, Inc.*, 574 F.Supp.2d 164, 2008 U.S. Dist. LEXIS 67431 (2008).

Individual who signed employment agreement on company’s behalf to employ plaintiff as manager of its non-existent subsidiary transacted business in District of Columbia, and thus was subject to personal jurisdiction under District of Columbia long-arm statute, where plaintiff was required under contract to provide services in District. *Gillespie v. Capitol Reprographics, LLC*, 573 F.Supp.2d 80, 2008 U.S. Dist. LEXIS 66366 (2008).

Florida accounting firm was not subject to personal jurisdiction in the District of Columbia under the “transacted business” provision of the District’s long-arm statute in investors’ securities fraud action arising from statements it made in audited financial statements prepared for Florida corporation; there was no contractual relationship between the accounting firm and the investors, and the firm’s contacts with the District of Columbia, including its communications with a director of the corporation and its distribution of financial statements to investors, were not focused on soliciting business or performing a business transaction. *Burman v. Phoenix Worldwide Indus.*, 437 F.Supp.2d 142, 2006 U.S. Dist. LEXIS 46070 (2006).

Even if girlfriend, a citizen of the Russian Federation, entered into agreement with boyfriend in the District of Columbia to assist him in purchasing an apartment in Moscow, Russia, no substantial connection existed between agreement and District of Columbia, so as to permit exercise of personal jurisdiction over girlfriend under “transacting business” provision of District of Columbia long-arm statute in boyfriend’s breach of contract action; negotiations for apartment purchase began when parties were in Russia, contract was to be performed in Russia, and alleged breach occurred in Russia. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

“Transacting business” provision of the District of Columbia long-arm statute permits exercise of personal jurisdiction when non-resident defendant’s contractual activities cause repercussions in the District; it is sufficient if suit is based on contract that has “substantial connection” with the District. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

Federal district court sitting in District of Columbia did not have personal jurisdiction over nonresident natural gas pipeline operator, under District of Columbia long-arm statute conferring jurisdiction when business was transacted, based on claim that illegal scheme to improperly allocate gas during periods of shortage was furthered by involvement with District of Columbia energy utility; agreements in question were negotiated and were to be performed outside of District. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

District Court did not have personal jurisdiction, pursuant to District of Columbia's long-arm statute, over federal government contractor with respect to claim by contractor's employee that contractor failed to provide him per diem payments when he performed work in Germany, inasmuch as employee's claims did not have significant connection to contractor's contract to perform aerospace services for federal government, and due process concerns existed based on facts that events giving rise to claims did not occur in District, government contract was executed in Texas, and division responsible for former employee's employment had its corporate offices in Texas. *Gowens v. DynCorp*, 132 F.Supp.2d 38, 2001 U.S. Dist. LEXIS 2557 (2001).

"Transacting any business" within the meaning of District of Columbia long-arm statute allowing personal jurisdiction over non-resident defendant transacting business in District embraces contractual activities which cause a consequence in the District. D.C. Code 1981, § 13-423(a)(1). *Overseas Partners, Inc. v. PROGEN Musavirlik ve Yonetim Hizmetleri, Ltd. Sikerti*, 15 F.Supp.2d 47, 1998 U.S. Dist. LEXIS 12245 (1998).

Personal jurisdiction may be exercised under transacting business provision of District of Columbia long-arm statute when nonresident has solicited business relationship and contract calls for performance of work within District. D.C. Code 1981, § 13-423(a)(1). *Schwartz v. CDI Japan*, 938 F. Supp. 1, 1996 U.S. Dist. LEXIS 8866 (1996).

Where District of Columbia client initially contacted investment advisory organization in New York, District Court for District of Columbia did not have personal jurisdiction over organization in suit based on organization's alleged failure to advise client of faltering fortunes of company in which client maintained substantial securities investment, either under District of Columbia statute establishing jurisdiction over any party "transacting any business in the District of Columbia," or under statute providing jurisdiction as result of "contracting to supply services in the District of Columbia," despite fact that agreement by which organization was substituted for its predecessor as investment advisor was agreed to by client in District of Columbia, correspondence was mailed by organization to client in District of Columbia on approximately 74 occasions and organization had consulted with client at client's office in District of Columbia on one occasion. D.C. Code § 13-423. *Textile Museum v. F. Eberstadt & Co.*, 440 F. Supp. 30, 1977 U.S. Dist. LEXIS 12947 (1977).

Allegations of agent's activities within local forum showed sufficient minimum contacts to subject nonresident principals to local jurisdiction under long-arm statute, in view of evidence

that agent solicited and actively pursued business activities resulting in contract executed locally. D.C. Code 1981, §§ 13-423(a)(1), 17-305(a); U.S. Const. Amends. 5, 14. *Smith v. Jenkins*, 452 A.2d 333, 1982 D.C. App. LEXIS 465 (1982).

Defendant that contracted with plaintiff to insure and reimburse her for expenses she would incur as a result of her obligation to pay for bills of a District of Columbia hospital for medical services authorized by defendant was within reach of the District's long-arm statute. *Hissong v. Exclusive Healthcare, Inc.*, 121 WLR 877 (Super. Ct. 1992).

Receipt of a subpoena is not acceptance of a contract in the context of transacting business as contemplated by subsection (a)(1). A subpoena commands a person to appear in court but does not by itself offer terms of a "contract." The plaintiff cannot hale the prosecutor into this jurisdiction merely by opening his own mail. *Sindram v. Relin*, 116 WLR 2093 (Super. Ct. 1988).

— Due process, transacting business.

In determining whether exercise of personal jurisdiction in the District of Columbia over non-resident defendant was authorized by the Due Process Clause, the appropriate inquiry is whether defendant had the requisite minimum contacts with the District so that the exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. *Quality Air Servs., L.L.C. v. Milwaukee Valve Co.*, 567 F.Supp.2d 96, 2008 U.S. Dist. LEXIS 55431 (2008).

The transacting any business prong of the District of Columbia long-arm statute permits the exercise of personal jurisdiction to the full extent authorized by the Due Process Clause of the Constitution. *Quality Air Servs., L.L.C. v. Milwaukee Valve Co.*, 567 F.Supp.2d 96, 2008 U.S. Dist. LEXIS 55431 (2008).

Manufacturer of valves used in heating, ventilation, and air conditioning (HVAC) systems purposefully availed itself of the benefits of doing business in District of Columbia, and, thus, was subject to personal jurisdiction in the District, consistent with due process and the District of Columbia long-arm statute; although manufacturer had no physical presence in the District nor did it direct its advertising specifically at the District, manufacturer's network of authorized distributors included companies both in Maryland and Virginia which, given their geographic proximity, targeted contractors who served the Washington metropolitan area, manufacturer was aware that it was accessing and benefiting from the District of Columbia market through its sales to distributors in Virginia and Maryland, and manufacturer placed advertisements in trade journals with a national audience. *Quality Air Servs.,*

L.L.C. v. Milwaukee Valve Co., 567 F.Supp.2d 96, 2008 U.S. Dist. LEXIS 55431 (2008).

With respect to personal jurisdiction, due process requires that (1) nonresident defendant purposefully avail itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws, (2) nonresident defendant reasonably anticipate being hauled into court in the forum state, and (3) the suit cannot offend traditional notions of fair play and substantial justice; in addition, the "minimum contacts" must come about by an action of the defendant purposefully directed toward the forum state. *Brunson v. Kalil & Co.*, 404 F.Supp.2d 221, 2005 U.S. Dist. LEXIS 40207 (2005).

Exercising personal jurisdiction over nonresident broker, who had not transacted business in District of Columbia, would not comport with due process; long-distance negotiations between defendant and the non-resident seller's lawyer, who happened to be located in the District, was not a significant enough contact to have caused defendant reasonably to anticipate being hauled into court, and notions of fair play and substantial justice would not be furthered by a finding of personal jurisdiction since the documents, records, and witnesses broker would rely upon in defending itself were all located in Arizona, and District's legitimate interests in the dispute were considerably diminished by fact that both parties were nonresidents. *Brunson v. Kalil & Co.*, 404 F.Supp.2d 221, 2005 U.S. Dist. LEXIS 40207 (2005).

"Transacting business" provision of the District of Columbia long-arm statute authorizes the exercise of personal jurisdiction to the full extent permitted by the Due Process Clause. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

Provision of District of Columbia long-arm statute allowing exercise of personal jurisdiction over nonresident defendants who transacted business in District is coextensive in reach with the personal jurisdiction allowed by due process clause of Federal Constitution. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

Critical inquiry for purposes of determining whether personal jurisdiction over nonresident defendant exists under District of Columbia long-arm statute based on conduct of business in district is whether business transacted within District can be reached jurisdictionally without offending due process clause. U.S. Const.Amend. 5; D.C. Code 1981, § 13-423(a).

First Am. Corp. v. Al-Nahyan, 948 F. Supp. 1107, 1996 U.S. Dist. LEXIS 17882 (1996).

District of Columbia was not focal point of case in which the United States sought to enjoin Chief Disciplinary Counsel of Disciplinary Board of the Supreme Court of New Mexico from inquiring into conduct of Assistant United States Attorney (AUSA), so as to provide long-arm jurisdiction, consistent with due process, over Disciplinary Counsel, though disciplinary action was based on conduct which occurred in the District of Columbia, as any effect that enforcement of rules of ethical conduct for New Mexico bar had on District of Columbia was incidental, though such enforcement might influence way in which particular prosecution was handled by an AUSA in the District of Columbia. U.S. Const.Amend. 5; D.C. Code 1981, § 13-423(a)(1). *United States v. Ferrara*, 847 F. Supp. 964, 1993 U.S. Dist. LEXIS 7558 (1993), affirmed by 54 F.3d 825, 311 U.S. App. D.C. 421, 1995 U.S. App. LEXIS 11789 (1995).

After deciding question of whether local law permits exercise in jurisdiction over individual nonresident defendants, district court must determine whether exercising jurisdiction comports with constitutional due process requirements. U.S. Const.Amend. 5, 14; D.C. Code 1981, § 13-423. *Trager v. Wallace Berrie & Co.*, 593 F. Supp. 223, 1984 U.S. Dist. LEXIS 24083 (1984).

The mere existence of a contract between a foreign corporation and a local resident is not enough to establish minimum contacts sufficient to satisfy due process in order to assert personal jurisdiction under the long-arm statute. *Gonzalez v. Internacional de Elevadores, S.A.*, 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

The "transacting business" prong of the long-arm statute is coextensive with the due process clause and, thus, covers any transaction of business in the District of Columbia that can be reached jurisdictionally without offending due process. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

Minimum contacts necessary for a court to exercise personal jurisdiction consistent with the due process clause based on the defendant transacting business must derive from the defendant having transacted any business in the District of Columbia. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

To satisfy the due process requirements associated with the exercise of personal jurisdiction over a nonresident defendant based on transacting business, the plaintiff must show that the defendant has purposefully engaged in some type of commercial or business-related activity directed at District of Columbia residents. *Holder v. Haarmann & Reimer Corp.*,

779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

Manufacturer of citric acid that was a component part of other products did not transact business in the District of Columbia and, therefore, was not subject to personal jurisdiction there under the long-arm statute or the due process clause in consumer's suit alleging price-fixing conspiracy; the manufacturer sold to other manufacturers outside the District and did not advertise in the District, and could not reasonably have foreseen being hauled into court in the District, and its citric acid reached the District, if at all, through a chain of manufacturers, distributors, and retailers. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

Where nonresident defendant has purposefully availed itself of benefits and protections of District of Columbia in engaging in a business activity in forum jurisdiction, it is fair and reasonable to expect it to anticipate being sued in that jurisdiction. U.S.C. Const. Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

In each case under long-arm statute, trial court must assure that defendant's contacts are such that maintenance of the suit in forum state does not offend traditional notions of fair play and substantial justice. D.C. Code 1981, § 13-423. *Hummel v. Koehler*, 458 A.2d 1187, 1983 D.C. App. LEXIS 340 (1983).

Exercise of long-arm jurisdiction over foreign corporations in District corporation's action for compensation for services in dealing with federal agency did not deny due process since defendant corporations, through their contract with District corporation, caused District corporation to carry on business activities on their behalf within District, where office was located, and since District had interest in providing forum for its residents. D.C. Code § 13-423(a)(1); U.S. Const. Amends. 5, 14. *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*, 339 A.2d 390, 1975 D.C. App. LEXIS 439 (1975).

— Establishing jurisdiction, transacting business.

Lender's parent corporation did not transact business in the District of Columbia, as required for exercise of specific jurisdiction over the corporation, under the District of Columbia's long-arm statute, in borrower's putative class action asserting claims arising out of lender's sub-prime lending practices, where the dispute was between Virginia residents over real property located in Virginia and agreements that were negotiated, executed, and performed in Virginia. *Khatib v. Alliance Bankshares Corp.*, 846 F.Supp.2d 18, 2012 U.S. Dist. LEXIS 27020 (2012).

District court had personal jurisdiction over lender's assignee in action brought by personal guarantor of loan, seeking injunctive and declaratory relief regarding whether he was released from guaranty to pay loan, under transacting any business provision of District of Columbia's long-arm statute, where assignee laid claim to guarantor's assets that served as collateral for guaranty, including those located in District, by taking assignment of guaranty and by later agreeing to reassign guaranty back to lender and to share in collection proceeds, which agreement was executed in District, was expressly governed by District's laws, and provided that assignee was to receive 90% of any recovery obtained by initial assignor. *Farouki v. Petra Int'l Banking Corp.*, 811 F.Supp.2d 388, 2011 U.S. Dist. LEXIS 106211 (2011), vacated by, remanded by 705 F.3d 515, 2013 U.S. App. LEXIS 1657 (D.C. Cir. 2013).

Bahamian law firm was not transacting business in the District of Columbia when it represented a Nevada client in her quest to obtain information about a Bahamian bank account allegedly opened by client's mother, as required for District of Columbia to assert specific jurisdiction over law firm under District of Columbia's long-arm statute, in lawsuit brought by client alleging law firm engaged in conspiracy with bank to hide existence of account. *Day v. Corn.r Bank (Overseas) Ltd.*, 789 F.Supp.2d 150, 2011 U.S. Dist. LEXIS 83749 (2011).

Bahamian bank, bank's manager, and bank's Swiss parent were not transacting business in the District of Columbia when Bahamian bank allegedly opened an account for a Kansas citizen, as required to establish specific jurisdiction over banks and manager under District of Columbia's long-arm statute, in lawsuit brought by account holder's daughter, a Nevada citizen, alleging she possessed rights to the alleged account. *Day v. Corn.r Bank (Overseas) Ltd.*, 789 F.Supp.2d 150, 2011 U.S. Dist. LEXIS 83749 (2011).

District court did not have jurisdiction under District of Columbia's long-arm statute over California state court in action brought by property owner asserting various claims concerning property in California; the California court had not engaged in any activity in the District of Columbia, and forcing it to litigate in District of Columbia may offend traditional notions of fair play and substantial justice. *Barbieri v. Aurora Loan Servs., LLC*, 724 F.Supp.2d 98, 2010 U.S. Dist. LEXIS 73123 (2010).

Minnesota attorney who allegedly represented non-profit corporation in connection with its acquisition of properties in District of Columbia was subject to specific personal jurisdiction in District in corporation's action alleging that attorney breached his fiduciary duties by assisting board member execute unauthor-

ized memorandum of understanding with donor concerning those properties, despite attorney's contention that he never represented corporation, where corporation alleged that attorney acted as its representative, and produced multiple letters signed by attorney in connection with acquisition of properties, including one that he expressly signed as counsel. *Arm. Genocide Museum & Mem'l, Inc. v. Cafesjian Family Found., Inc.*, 607 F.Supp.2d 185, 2009 U.S. Dist. LEXIS 31880 (2009).

In determining whether to assert personal jurisdiction over nonresident defendant pursuant to District of Columbia long-arm statute, courts must examine whether quality and nature of nonresident defendant's contacts with District are voluntary and deliberate or only random, fortuitous, tenuous and accidental, whether defendant has purposefully availed itself of benefits and protections of District in engaging in business activity in forum jurisdiction, and whether it is fair and reasonable to expect it to anticipate being sued in that jurisdiction. *Arm. Genocide Museum & Mem'l, Inc. v. Cafesjian Family Found., Inc.*, 607 F.Supp.2d 185, 2009 U.S. Dist. LEXIS 31880 (2009).

Federal district court in District of Columbia could not exercise personal jurisdiction over American International School of Bucharest (AISB), as non-profit unincorporated educational entity organized under authority of United States and government of Romania in Romania, or its board of directors, under "transacting any business" clause of District of Columbia long-arm statute on basis that AISB had been incorporated in State of Delaware or AISB defendants' contacts with United States Department of State through its award of annual grant for specific purpose of purchasing textbooks or upgrading security. *Ficken v. Rice*, 594 F.Supp.2d 71, 2009 U.S. Dist. LEXIS 7036 (2009).

To determine whether District of Columbia long-arm statute reaches the conduct at issue, courts must consider whether plaintiffs had sufficient contacts with the District such that the assertion of personal jurisdiction comports with due process. *Heller v. Nicholas Applegate Capital Mgmt., LLC*, 498 F.Supp.2d 100, 2007 U.S. Dist. LEXIS 54091 (2007).

In action brought by consumers against officers and employees of defunct advertising company, stemming from receipt of unwanted facsimile transmissions, district court lacked personal jurisdiction over non-resident employee under District of Columbia long-arm statute; although employee allegedly assisted with arranging or paying for locations or billing for computers and/or phone lines used in fax network, he did not transact business, enter into contracts or cause tortious injury in District of Columbia. *Kopff v. Battaglia*, 425

F.Supp.2d 76, 2006 U.S. Dist. LEXIS 13638 (2006).

While "general personal jurisdiction" permits a court to hear a suit without regard to the underlying claim's relationship to the defendant's activity in the forum, "specific personal jurisdiction" allows only those claims based on acts of a defendant that touch and concern the forum. *Brunson v. Kalil & Co.*, 404 F.Supp.2d 221, 2005 U.S. Dist. LEXIS 40207 (2005).

To establish personal jurisdiction under "transacting business" provision of District of Columbia long-arm statute, plaintiff must establish that: (1) defendant transacted business in the District, (2) claim arose from the business in the District, (3) defendant had minimum contacts with the jurisdiction, and (4) court's exercise of jurisdiction does not offend traditional notions of fair play and substantial justice. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

Federal district court sitting in District of Columbia did not have personal jurisdiction over nonresident natural gas shippers and pipeline operators, in suit claiming conspiracy to circumvent regulations governing equitable allocation of rights to receive uninterrupted natural gas during annual periods of shortage, under District of Columbia long-arm provision conferring jurisdiction when business was transacted in District, despite claim that shippers and operators had furthered scheme by filing false information with Federal Energy Regulatory Commission (FERC). *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

Federal district court sitting in District of Columbia did not have personal jurisdiction over nonresident natural gas shippers and pipeline operators, in suit claiming conspiracy to circumvent regulations governing equitable allocation of rights to receive uninterrupted natural gas during annual periods of shortage, under District of Columbia long-arm provision conferring jurisdiction when business was transacted in District; defendants' activities in District involved contact with federal government, which did not constitute business transaction. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

In order for there to be personal jurisdiction under transacting business provision of District of Columbia long-arm statute, claim must arise from business transacted in District.

Helmer v. Doletskaya, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

To establish personal jurisdiction under "transacting business" clause of District of Columbia's long-arm statute, plaintiff must demonstrate that (1) defendant transacted business in District of Columbia; (2) claim arose from business transacted in District of Columbia; (3) defendant had minimum contacts with District of Columbia; and (4) court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. *Jacobson v. Oliver*, 201 F.Supp.2d 93, 2002 U.S. Dist. LEXIS 7938 (2002).

United States failed to establish that British tobacco company transacted any business in District of Columbia, as would establish basis for exercise of jurisdiction over company pursuant to District of Columbia long-arm statute in action in which United States sought to recover health care expenses incurred in treating patients for smoking-related illnesses, and to disgorge profits under Racketeer Influenced and Corrupt Organizations Act (RICO). *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

In relying on "transacting business" subsection of District of Columbia's long-arm statute, one must prove both that claim arises from defendant's transacting any business in District and that claim for relief arises from acts enumerated in long-arm statute itself. D.C. Code 1981, § 13-423(a)(1), (b). *Mallinckrodt Med. v. Sonus Pharms.*, 989 F. Supp. 265, 1998 U.S. Dist. LEXIS 136 (1998).

That reasonable people or noted actor would say that foreign corporation does business in forum is not probative of corporation's amenability to district court's jurisdiction under District of Columbia law allowing court to exercise jurisdiction for acts related to foreign corporation's transacting business in district, which is intricate legal determination for court. D.C. Code 1981, § 13-423(a)(1). *Richard v. Bell Atl. Corp.*, 946 F. Supp. 54, 1996 U.S. Dist. LEXIS 17637 (1996).

In order to establish personal jurisdiction under "transacting business" provision of District of Columbia long-arm statute, plaintiff must prove that: (1) defendant transacted business in District, (2) claim arose from business transacted in District, and (3) defendant purposely established minimum contacts with district such that court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. D.C. Code 1981, § 13-423(a)(1), (b). *Richter v. Analex*

Corp., 940 F. Supp. 353, 1996 U.S. Dist. LEXIS 15081 (1996).

To establish personal jurisdiction over non-resident defendant, under transacting business provision of District of Columbia's long-arm statute, plaintiff must show that: defendant transacted to business in District; claim arose from business transacted in District; and defendant had minimum contacts with District such that exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. U.S. Const. Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1). *Schwartz v. CDI Japan*, 938 F. Supp. 1, 1996 U.S. Dist. LEXIS 8866 (1996).

To establish personal jurisdiction under the "transacting business" clause of the District of Columbia long-arm statute, plaintiff must demonstrate that: defendant transacted business in the District; claim arose from the business transacted and the District (specific jurisdiction); defendant had minimum contacts with District; and court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. D.C. Code 1981, § 13-423(a)(1). *COMSAT Corp. v. Finshipyards S.A.M.*, 900 F. Supp. 515, 1995 U.S. Dist. LEXIS 14701 (1995).

To establish personal jurisdiction under "transacting business" clause of District of Columbia long-arm statute plaintiff must prove that (1) defendant transacted business in District, (2) claim arose from business transacted in District, and (3) defendant had minimum contacts with District such that court's exercise of personal jurisdiction would not offend "traditional notions of fair play and substantial justice." D.C. Code 1981, § 13-423. *Cellutech, Inc. v. Centennial Cellular Corp.*, 871 F. Supp. 46, 1994 U.S. Dist. LEXIS 19588 (1994).

Plaintiff seeking to carry his burden of proving personal jurisdiction under "transacting business" clause of District of Columbia's long-arm statute must show: first, that defendant transacted business in District; second, that claim arose from business transacted in District; and third, that defendant had minimum contacts with District such that court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. D.C. Code 1981, § 13-423(a)(1). *Dooley v. United Technologies Corp.*, 786 F. Supp. 65, 1992 U.S. Dist. LEXIS 2838 (1992).

Although extraterritorial service of process was authorized for federal claims asserted by union under ERISA, court did not have personal jurisdiction over pendent state law claims pursuant to District of Columbia long-arm statute; union's state law claims all arose from acts or omissions that occurred in state of Kentucky and union's right to sue under state law arose, if at all solely because of status as local creditor. D.C. Code 1981, § 13-423(a)(1). *Connors v.*

Marontha Coal Co., 670 F. Supp. 45, 1987 U.S. Dist. LEXIS 9267 (1987).

Where all acts at issue in suit by employee against former employer occurred other than in District of Columbia, there was no jurisdiction there under long-arm statute, notwithstanding that employer had transacted some business in the District. D.C. Code 1981, §§ 13-423, 13-423(a)(1, 2), (b). *Appel v. Southeastern Employers Service Corp.*, 605 F. Supp. 74, 1985 U.S. Dist. LEXIS 22395 (1985).

Under District of Columbia law, both act of nonresident defendant and its effect must occur in District of Columbia for that defendant to be subject to personal jurisdiction, and that provision is coextensive with due process considerations. U.S. Const. Amendments. 5, 14; D.C. Code 1981, § 13-423(a)(1). *Trager v. Wallace Berrie & Co.*, 593 F. Supp. 223, 1984 U.S. Dist. LEXIS 24083 (1984).

Finding that foreign corporation transacted business in District of Columbia for purposes of District statute deeming the superintendent of corporation as agent for service of process was sufficient to support a finding that the corporation was transacting business in the District for purpose of the District's long-arm statute. D.C. Code §§ 13-423(a)(1), 29-933i(c). *First American Bank, N. A. v. United Equity Corp.*, 89 F.R.D. 81, 1981 U.S. Dist. LEXIS 10529 (1981).

What guides the minimum contacts inquiry, with respect to exercise of personal jurisdiction over a nonresident defendant under long-arm statute, is a search for meaningful acts reflecting purposeful, affirmative activity within the District of Columbia. *Jackson v. Loews Wash. Cinemas, Inc.*, 944 A.2d 1088, 2008 D.C. App. LEXIS 111 (2008).

The nexus requirement for personal jurisdiction over nonresident defendant transacting business within District of Columbia (D.C.), that claim must arise from the act or acts conferring jurisdiction, means only that the claim raised must have a discernible relationship to the "business" transacted in D.C. *Jackson v. Loews Wash. Cinemas, Inc.*, 944 A.2d 1088, 2008 D.C. App. LEXIS 111 (2008).

Mexican elevator repair company did not make any misrepresentations to American Embassy employee or take any active steps to prevent her from suing company when it mistakenly wrote that it was incorporated in California in its contract with the embassy, rather than Baja California, and thus, the company was not equitably estopped from asserting a lack of personal jurisdiction in employee's personal injury action, where the company made a typographical error in drafting the contract, but corrected the error as soon as it was discovered, and at most the company may have temporarily caused the embassy to think that the company was incorporated in the United States rather than Mexico. *Gonzalez v. Internacional*

de Elevadores, S.A., 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

Assuming that Mexican elevator repair company transacted business in the District, the company could not have reasonably foreseen being hauled into court in the District as required to assert jurisdiction under the long-arm statute, where the company did not purposefully direct any activities toward the District, but rather supplied another company, which did business throughout the United States, with elevator parts. *Gonzalez v. Internacional de Elevadores, S.A.*, 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

The "transacting any business" provision of long-arm statute being coextensive with due process, steps in two-step inquiry have been merged into single due process analysis. D.C. Code 1981, §§ 13-423(a)(1), 17-305(a); U.S.C. Const. Amendments. 5, 14. *Smith v. Jenkins*, 452 A.2d 333, 1982 D.C. App. LEXIS 465 (1982).

For entity to be transacting business within the jurisdiction, some purposeful, affirmative activity within District of Columbia is required and claim must arise of such activity. D.C. Code § 13-423(b). *Bueno v. La Compania Peruana de Radiodifusion, S.A.*, 375 A.2d 6, 1977 D.C. App. LEXIS 448 (1977).

— Extent of jurisdiction, transacting business.

"Transacting business" provision of District of Columbia long-arm statute is as far-reaching as due process clause allows. D.C. Code 1981, § 13-423(a)(1); U.S.C. Const. Amend. 5. *Koteen v. Bermuda Cablevision, Ltd.*, 913 F.2d 973, 1990 U.S. App. LEXIS 15781 (C.A.D.C. 1990).

Swedish photographer who sued German restaurant corporation, alleging illegal use of her copyrighted works as central part of restaurant decor, would be permitted jurisdictional discovery on question of specific personal jurisdiction; photographer had good-faith basis for requesting discovery of jurisdictional evidence, and evidence could have established whether corporation's ties with District of Columbia were sufficient to show that company was "doing business" within District. *Rundquist v. Vapiano SE*, 798 F.Supp.2d 102, 2011 U.S. Dist. LEXIS 78781 (2011).

Sweep of the "transacting any business" clause within District of Columbia's long-arm statute covers any transaction of business in the District of Columbia that can be reached jurisdictionally without offending the due process clause. *Heller v. Nicholas Applegate Capital Mgmt., LLC*, 498 F.Supp.2d 100, 2007 U.S. Dist. LEXIS 54091 (2007).

Broker's communication with Federal Communications Commission (FCC) and the Securities and Exchange Commission (SEC) in District of Columbia related to his general business dealings did not qualify as "transact-

ing business" in the District within meaning of District of Columbia long-arm statute. *Brunson v. Kalil & Co.*, 404 F.Supp.2d 221, 2005 U.S. Dist. LEXIS 40207 (2005).

Nonresident seller's suit against nonresident broker seeking declaration that broker was not owed funds under brokerage agreement pertaining to sale of a New Jersey television station did not arise from business transacted in the District of Columbia, and therefore specific personal jurisdiction was lacking over broker under "transacting business" provision of District of Columbia long-arm statute; broker traveled to Philadelphia in order to solicit the brokerage agreement, which was formed in Philadelphia, there was no solicitation, negotiation, or formation of the brokerage agreement which occurred in the District, and closing of sale of television station in District occurred pursuant to the purchase agreement, not the brokerage agreement. *Brunson v. Kalil & Co.*, 404 F.Supp.2d 221, 2005 U.S. Dist. LEXIS 40207 (2005).

Nonresident bank, which had contracted to provide banking services to District of Columbia company, transacted business in District within meaning of long-arm statute, and thus was subject to specific personal jurisdiction of court in customer's action for wrongful honoring of counterfeit checks; bank had visited company offices to install software, train users, and strengthen customer relations. *Ulico Cas. Co. v. Fleet Nat'l Bank*, 257 F.Supp.2d 142, 2003 U.S. Dist. LEXIS 5757 (2003).

The "transacting any business" clause of District of Columbia's long-arm statute provides jurisdiction to full extent allowed by due process clause. U.S. Const.Amend. 14; D.C. Code 1981, § 13-423(a)(4). *Heroes, Inc. v. Heroes Found.*, 958 F. Supp. 1, 1996 U.S. Dist. LEXIS 20660 (1996).

Transacting business provision of District of Columbia long-arm statute gives rise to specific, rather than general, jurisdiction and, thus, disallows claims that do not relate to acts that form basis for personal jurisdiction. D.C. Code 1981, § 13-423(b). *Schwartz v. CDI Japan*, 938 F. Supp. 1, 1996 U.S. Dist. LEXIS 8866 (1996).

"Transacting business" provision of the District of Columbia long-arm statute permits exercise of personal jurisdiction to full extent permitted by due process clause. U.S.C. Const.Amend. 14; D.C. Code 1981, § 13-423(a)(1). *Freiman v. Lazur*, 925 F. Supp. 14, 1996 U.S. Dist. LEXIS 6412 (1996).

"Transacting business" provision of District of Columbia long-arm statute permits exercise of personal jurisdiction to full extent permitted by due process clause. U.S.C. Const.Amend. 5; D.C. Code 1981, § 13-423(a)(1). *COMSAT Corp. v. Finshipyards S.A.M.*, 900 F. Supp. 515, 1995 U.S. Dist. LEXIS 14701 (1995).

Portion of District of Columbia long-arm statute pertaining to transaction of business is coextensive with constitution's due process limit. D.C. Code 1981, § 13-423(a)(1); U.S.C. Const.Amend. 5, 14. *Dickson v. United States*, 831 F. Supp. 893, 1993 U.S. Dist. LEXIS 12544 (1993).

The "transacting business" clause of the Washington, D.C. long-arm statute permits jurisdiction to fullest extent permissible under due process clause. D.C. Code 1973, § 13-423; U.S. Const.Amend. 14. *Mitchell Energy Corp. v. Mary Helen Coal Co.*, 524 F. Supp. 558, 1981 U.S. Dist. LEXIS 9910 (1981).

The "transacting any business" section of the District of Columbia long-arm statute has been interpreted broadly and its reach is limited only by due process considerations. D.C. Code § 13-423(a)(1); U.S. Const. Amend. 5, 14. *Meyers v. Smith*, 460 F. Supp. 621, 1978 U.S. Dist. LEXIS 14352 (1978).

"Transacting any business" provision of long-arm statute is coextensive with due process clause. (Per *Curiam* opinion joined by four Judges with one Judge concurring in result.) D.C. Code 1973, §§ 13-423, 13-423(a)(1); U.S. Const. Amend. 5, 14. *Mouzavires v. Baxter*, 434 A.2d 988, 1981 D.C. App. LEXIS 347 (1981), writ of certiorari denied by 455 U.S. 1006, 102 S. Ct. 1643, 71 L. Ed. 2d 875, 1982 U.S. LEXIS 1293, 50 U.S.L.W. 3713 (1982).

Finding that nonresident defendant has transacted business in District of Columbia does not result in unlimited jurisdiction, but, rather, jurisdiction is limited to claims arising from particular transaction of business which provides basis for jurisdiction. U.S. Const. Amend. 14; D.C. Code §§ 13-423, 13-423(b). *Cohane v. Arpeja-California, Inc.*, 385 A.2d 153, 1978 D.C. App. LEXIS 448 (1978), writ of certiorari denied by 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651, 1978 U.S. LEXIS 3936 (1978).

Foreign franchisor or licensor may be subject to suit in District concerning those aspects of the local franchisee's business in respect to which it has taken some significant action but not to those aspects in which it has played no part. *International Limousine Serv., Inc. v. W.B. Johnson Properties, Inc.*, 114 WLR 1689 (Super. Ct. 1986).

— In general.

Personal jurisdiction under the theory of transacting any business in the District of Columbia is limited to claims arising from the particular transaction of business in the District. *World Wide Minerals, LTD. v. Republic of Kaz.*, 296 F.3d 1154, 2002 U.S. App. LEXIS 15485 (C.A.D.C. 2002), writ of certiorari denied by 537 U.S. 1187, 123 S. Ct. 1250, 154 L. Ed. 2d 1019, 2003 U.S. LEXIS 1112, 71 U.S.L.W. 3547 (2003).

Under the District of Columbia's long-arm statute, local courts may exercise so-called "specific jurisdiction" over a person for claims that arise from the person's transacting any business in the District. *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 2002 U.S. App. LEXIS 11674 (C.A.D.C. 2002).

Transacting any business prong of District of Columbia's long-arm statute permits exercise of personal jurisdiction to full extent authorized by Due Process Clause. *Gillespie v. Capitol Reprographics, LLC*, 573 F.Supp.2d 80, 2008 U.S. Dist. LEXIS 66366 (2008).

A single act may be sufficient to constitute transacting business, within the meaning of the District of Columbia long-arm statute, so long as that contact is voluntary and deliberate, rather than fortuitous. *Quality Air Servs., L.L.C. v. Milwaukee Valve Co.*, 567 F.Supp.2d 96, 2008 U.S. Dist. LEXIS 55431 (2008).

Persistent conduct undertaken in a person's individual capacity may constitute the transaction of business for purposes of the District of Columbia long-arm statute. *Walton v. Fed. Bureau of Prisons*, 533 F.Supp.2d 107, 2008 U.S. Dist. LEXIS 7966 (2008).

Persistent conduct undertaken in a person's individual capacity may constitute the transaction of business for purposes of District of Columbia's long-arm statute. *Metcalf v. Fed. Bureau of Prisons*, 530 F.Supp.2d 131, 2008 U.S. Dist. LEXIS 579 (2008).

Personal jurisdiction over nonresident broker under "transacting business" provision of District of Columbia long-arm statute could be based only on the acts that had occurred at the time the complaint was filed, not on those acts occurring after complaint was filed. *Brunson v. Kalil & Co.*, 404 F.Supp.2d 221, 2005 U.S. Dist. LEXIS 40207 (2005).

Existence of District of Columbia subscriber to music-downloading website was sufficient to satisfy "transacting business" element of District's long-arm statute, for purpose of determining whether federal court had personal jurisdiction over nonresident website operator, in copyright infringement action brought by record companies. *Arista Records, Inc. v. Sakfield Holding Co.*, 314 F.Supp.2d 27, 2004 U.S. Dist. LEXIS 7023 (2004).

"Transacting any business" clause of District of Columbia long-arm statute requires same contacts as constitutional due process. *Ulico Cas. Co. v. Fleet Nat'l Bank*, 257 F.Supp.2d 142, 2003 U.S. Dist. LEXIS 5757 (2003).

To obtain personal jurisdiction over a nonresident defendant under the "transacting business" provision of the District of Columbia's long-arm statute, a plaintiff must assert three elements with specificity: the non-resident must have transacted business within the District, the contact must give rise to the claim, and the assertion must be consistent with due

process considerations. *Gowens v. DynCorp*, 132 F.Supp.2d 38, 2001 U.S. Dist. LEXIS 2557 (2001).

To establish personal jurisdiction under the "transacting business" clause of the District of Columbia's long-arm statute, plaintiff must demonstrate that (1) defendant transacted business in the District of Columbia; (2) claim arose from the business transacted in District of Columbia (so-called specific jurisdiction); (3) defendant had minimum contacts with District of Columbia; and (4) court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. *Formica v. Cascade Candle Co.*, 125 F.Supp.2d 552, 2001 U.S. Dist. LEXIS 116 (2001).

United States failed to establish that British tobacco company engaged in business, derived substantial revenue, or engaged in any persistent course of conduct in the District of Columbia, as would establish basis for exercise of jurisdiction over company pursuant to District of Columbia long-arm statute in action in which United States sought to recover health care expenses incurred in treating patients for smoking-related illnesses, and to disgorge profits under Racketeer Influenced and Corrupt Organizations Act (RICO). *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

To obtain personal jurisdiction over a nonresident defendant under "transacting business" clause of District of Columbia's long-arm statute, plaintiff must assert three requirements with specificity: that non-resident defendant transacted business within District of Columbia, that that contact gave rise to claim, and that assertion of personal jurisdiction was consistent with due process considerations. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

"Arising under" element of "transacting business" clause of District of Columbia's long-arm statute was not satisfied by meetings which allegedly contributed to conspiracy between New York corporation and Kazakhstan and allegedly occurred at Kazakhstan embassy, given that meetings occurred after Canadian corporation that allegedly was denied uranium export license by Kazakhstan due to conspiracy suffered such injury. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

Defendant need not transact extensive business in District of Columbia to be subject to personal jurisdiction there under long-arm

statute. D.C. Code 1981, § 13-423(a). First Am. Corp. v. Al-Nahyan, 948 F. Supp. 1107, 1996 U.S. Dist. LEXIS 17882 (1996).

Under long-arm statute, District of Columbia court may exercise personal jurisdiction over person who acts directly or by agent as to claim arising from that person's transacting any business in the District. D.C. Code 1981, § 13-423(a)(1). Chrysler Corp. v. General Motors Corp., 589 F. Supp. 1182, 1984 U.S. Dist. LEXIS 16318 (1984).

A single act may be sufficient to constitute "transacting business" within District of Columbia under long-arm jurisdiction statute, so long as that contact is voluntary and deliberate, rather than fortuitous. Jackson v. Loews Wash. Cinemas, Inc., 944 A.2d 1088, 2008 D.C. App. LEXIS 111 (2008).

The only nexus required between the District of Columbia and the nonresident defendant, under the "transacting any business" provision of long-arm jurisdiction statute, is some affirmative act by which the defendant brings itself within the jurisdiction and establishes minimum contacts. Jackson v. Loews Wash. Cinemas, Inc., 944 A.2d 1088, 2008 D.C. App. LEXIS 111 (2008).

Non-resident client "transacted business" in District of Columbia, as basis for long-arm jurisdiction over client, in law firm's action to collect attorney fees; client retained the services of the District of Columbia office of law firm, to avail itself of law firm's specialized expertise in securities regulation. Digital Broad. Corp. v. Rosenman & Colin, LLP, 847 A.2d 384, 2004 D.C. App. LEXIS 162 (2004).

In the absence of any significant connection between nonresident manufacturer and the District of Columbia, manufacturer's extrajurisdictional participation in an alleged criminal conspiracy to fix prices of citric acid, however culpable, was not "transacting any business in the District of Columbia" within the meaning of long-arm statute. Holder v. Haarmann & Reimer Corp., 779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

The phrase "transacting any business," within statute authorizing a court in the District of Columbia to exercise personal jurisdiction over a person who acts directly or by agent as to a claim for relief arising from person's transacting any business in the District of Columbia, embraces those contractual activities of a nonresident defendant which cause a consequence in the District of Columbia. D.C. Code 1981, § 13-423(a), (a)(1), (b). Cockrell v. Cumberland Corp., 458 A.2d 716, 1983 D.C. App. LEXIS 333 (1983).

"Transacting any business" provision of District of Columbia long-arm statute embraces those contractual activities of nonresident defendant which causes a consequence in the District. (Per Curiam opinion joined by four

Judges with one Judge concurring in result.) D.C. Code 1973, §§ 13-423, 13-423(a)(1); U.S. Const. Amendments. 5, 14. Mouzavires v. Baxter, 434 A.2d 988, 1981 D.C. App. LEXIS 347 (1981), writ of certiorari denied by 455 U.S. 1006, 102 S. Ct. 1643, 71 L. Ed. 2d 875, 1982 U.S. LEXIS 1293, 50 U.S.L.W. 3713 (1982).

— Minimum contacts generally, transacting business.

District court did not have personal jurisdiction under the District of Columbia long-arm statute over Jordanian currency trading company and its officers in suit alleging that company and its officers were liable for defrauding plaintiff bank of more than \$23 million through an illegal check kiting scheme; evidence showed only that company received checks drawn on accounts in the District of Columbia and that company wrote checks on its account with plaintiff bank in New York that were eventually deposited in the District by third parties; thus, plaintiff failed to make a prima facie showing that company purposefully established minimum contacts with the District or that it participated in a conspiracy in the District. D.C. Code 1981, § 13-423(a)(1). First Chicago International v. United Exchange Co., 836 F.2d 1375, 1988 U.S. App. LEXIS 490 (C.A.D.C. 1988).

Local Department of Housing and Urban Development (HUD) foreclosure commissioner lacked sufficient contacts with forum to warrant district court's exercise of personal jurisdiction, pursuant to District of Columbia long-arm statute, in landlord's action stemming from foreclosure of housing complex; commissioner's appointment was effectuated exclusively by HUD's Texas office, and at no point did commissioner communicate with any HUD officials in District as to process at issue. NBC-USA Hous., Inc. v. Donovan, 774 F.Supp.2d 277, 2011 U.S. Dist. LEXIS 35255 (2011), appeal dismissed by 674 F.3d 869, 400 U.S. App. D.C. 86, 2012 U.S. App. LEXIS 6936 (2012).

District court did not, pursuant to either transacting business or contracting to supply services provisions of District of Columbia long-arm statute, have personal jurisdiction in federal inmate's civil rights action over Bureau of Prisons (BOP) officials, employees, and agents, Federal Bureau of Investigation (FBI) agent, Kansas Assistant United States Attorney (AUSA), or United States marshals; complaint made no allegations that such defendants had any personal connection with District of Columbia other than their federal employment, and mere fact that defendants were federal government employees, affiliated with agencies that were headquartered or maintained offices in District of Columbia, was insufficient to render them subject to suit in their individual capaci-

ties. *Akers v. Watts*, 740 F.Supp.2d 83, 2010 U.S. Dist. LEXIS 100960 (2010).

Mortgagee and mortgagee's attorney lacked meaningful contacts with District of Columbia required for exercise of personal jurisdiction in comportment with due process in defaulted mortgagor's action in District of Columbia district court alleging that defendants conspired in bad faith to fraudulently obtain mortgagor's property; while defendants may have transacted business or contracted to supply services in District of Columbia, they had not done so with respect to foreclosure and subsequent sale of property located in Maryland which gave rise mortgagor's causes of action, foreclosure proceedings and any other litigation pertaining to mortgagor's interest in property took place in state and federal courts in Maryland, and defendants had not caused any injury to mortgagor within District of Columbia with respect to foreclosed property. *Kissi v. Panzer*, 664 F.Supp.2d 120, 2009 U.S. Dist. LEXIS 98877 (2009).

Netherlands law firm's telephone calls, e-mails, facsimiles and mailings, including invoices, to Delaware corporation's District of Columbia office did not demonstrate purposeful availment or minimum contacts sufficient to subject firm to personal jurisdiction on the basis of transacting business in corporation's legal malpractice action in federal district court in District of Columbia; such communications were incidental to nearly every business relationship and were not indicative of any desire to do business in District. *Exponential Biotherapies, Inc. v. Houthoff Buruma N.V.*, 638 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 65763 (2009).

Persistent conduct undertaken in a person's individual capacity may constitute "transacting business," for purposes of determining whether district court has personal jurisdiction over that person under District of Columbia's long-arm statute. *Ballard v. Holinka*, 601 F.Supp.2d 110, 2009 U.S. Dist. LEXIS 15759 (2009).

Mere fact that federal prison warden, who was non-resident, was employee of Bureau of Prisons (BOP), which was headquartered in District of Columbia, did not render her subject to suit in her individual capacity in District, in prisoner's action under §§ 1983 alleging violations of his First Amendment rights, and under Administrative Procedure Act. *Ballard v. Holinka*, 601 F.Supp.2d 110, 2009 U.S. Dist. LEXIS 15759 (2009).

Plaintiff who brought suit against the former president of the Islamic Republic of Iran in his personal capacity failed to establish that personal jurisdiction existed under District of Columbia long-arm statute, based on allegations that defendant had visited the jurisdiction, and had explored business possibilities; there was no discernable connection between the alleged

activities and plaintiff's claims for relief, which were predicated solely on the unrelated acts that took place in Iran. *Nikbin v. Islamic Republic of Iran*, 471 F.Supp.2d 53, 2007 U.S. Dist. LEXIS 1903 (2007).

In action brought by consumers against officers and employees of defunct advertising company, stemming from receipt of unwanted facsimile transmissions, district court lacked personal jurisdiction over non-resident officer of telecommunications service provider under District of Columbia long-arm statute; although provider allegedly was primary carrier of faxes sent by company, consumers did not aver that officer regularly conducted or solicited business in District of Columbia or that he derived substantial revenue from goods used or consumed or services rendered in District. *Kopff v. Battaglia*, 425 F.Supp.2d 76, 2006 U.S. Dist. LEXIS 13638 (2006).

Nonresident broker's single contact of a potential buyer of New Jersey television station in the District of Columbia was not significant enough for court to assert personal jurisdiction over broker under "transacting business" provision of District of Columbia long-arm statute. *Brunson v. Kalil & Co.*, 404 F.Supp.2d 221, 2005 U.S. Dist. LEXIS 40207 (2005).

District court lacked personal jurisdiction under the "transacting business" prong of the District of Columbia long-arm statute over organizations involved in administration of graduate medical education, based on fact that they were "governing sponsors" of non-profit corporation whose principal office was in the District of Columbia, that they nominated two directors to corporation's board. *Jung v. Ass'n of Am. Med. Colleges*, 300 F.Supp.2d 119, 2004 U.S. Dist. LEXIS 1826 (2004).

District court lacked personal jurisdiction over institutions which sponsored medical residency programs, under the "transacting business" prong of the District of Columbia long-arm statute, based on institutions' entry into institutional match contract with non-profit corporation whose principal office was in the District of Columbia, and accompanying electronic and/or mail correspondence institutions sent into the District in support of the contract; institutions could not reasonably anticipate being sued in the District on the basis of such contacts. *Jung v. Ass'n of Am. Med. Colleges*, 300 F.Supp.2d 119, 2004 U.S. Dist. LEXIS 1826 (2004).

Fact that credit card bills allegedly incurred by girlfriend, a citizen of the Russian Federation, on boyfriend's credit cards were sent to boyfriend's address in the District of Columbia was insufficient to establish requisite "substantial connection" with District to permit exercise of personal jurisdiction over girlfriend in District, under "transacting business" provision of District's long-arm statute, in connection with

boyfriend's claim that she breached contract to repay bills; majority of bills were incurred outside the United States. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

Under certain circumstances, single act may be adequate to bring defendant within reach of "transacting business" provision of District of Columbia long-arm statute. *Helmer v. Doletskaya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by, remanded by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

When the corporation contesting jurisdiction is found to be nothing more than the alter ego of an affiliated corporation over which the district court does have jurisdiction, the affiliated corporation's jurisdictional contacts may be extended to reach the other corporate entity. *Johnson-Tanner v. First Cash Fin. Servs.*, 239 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 335 (2003).

Federal district court in the District of Columbia did not have personal jurisdiction over manufacturer of candle, which had allegedly spontaneously exploded and caused injury, under the "transacting business" clause of the District of Columbia's long-arm statute, merely because manufacturer sold candles to a nationwide distributor that supplied the candle at issue to a retail store in the District of Columbia; the personal injury plaintiff was injured in Maryland and was resident of Maryland, manufacturer was based in Oregon, did not maintain offices or solicit business in the District, and manufacturer's arrangements with the distributor were independent of any contracts between distributor and its customer stores, as manufacturer did not receive any revenue from candle sales in the District. *Formica v. Cascade Candle Co.*, 125 F.Supp.2d 552, 2001 U.S. Dist. LEXIS 116 (2001).

British tobacco company lacked sufficient contacts with District of Columbia to allow exercise of jurisdiction over company consistent with due process clause in action in which United States sought to recover health care expenses incurred in treating patients for smoking-related illnesses, and to disgorge profits under Racketeer Influenced and Corrupt Organizations Act (RICO); actions of other tobacco companies with which British company allegedly conspired could not be attributed to it, and British company had not purposefully directed its activities at District of Columbia. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

New York corporation's involvement in non-profit organization encouraging international trade with central Asia did not satisfy "transacting business" requirement for personal jurisdiction under "transacting business" clause of District of Columbia's long-arm statute, given absence of showing that organization was contact of substantial character for corporation. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

Under "transacting business" clause of District of Columbia's long-arm statute, corporation transacts business within the District only if the business is of a substantial character. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

District court closely adheres to requirement under "transacting business" clause of District of Columbia's long-arm statute that there be significant connection between claim and alleged contact with forum. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

New York corporation's acts of publishing advertising in District of Columbia and mailing trade magazines there were not related to alleged conspiracy with Kazakhstan to breach contract between Kazakhstan and Canadian corporation, as required for such contacts to satisfy requirement, under "transacting business" clause of District of Columbia long-arm statute, that alleged injury arise out of forum contacts. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

Personal jurisdiction did not exist over New York corporation under national service provisions of Clayton Act, given that corporation lacked sufficient contacts with District of Columbia to establish venue, as required. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

Foreign corporation transacted business in the District of Columbia and, therefore, had sufficient minimum contacts for personal jurisdiction under the due process clause in contract dispute arising out of real estate development in Turkey; corporation's project manager allegedly sought out American developer to discuss the project, the parties negotiated some of the

terms of the contract in the District, corporation's agents traveled to the District to visit with potential subcontractors and financial institutions, and the contract contemplated that the developer would perform significant portions in the District. U.S.C. Const.Amend. 5; D.C. Code 1981, § 13-423(a)(1). *Overseas Partners, Inc. v. PROGEN Musavirlik ve Yonetim Hizmetleri, Ltd. Sikerti*, 15 F.Supp.2d 47, 1998 U.S. Dist. LEXIS 12245 (1998).

Algerian citizen who had sought political asylum in United States, and who had conducted business on behalf of Algerian political group with which he was affiliated from his office in District of Columbia, had requisite minimum contacts with District that were unrelated to solicitation of funds from United States government to allow exercise of personal jurisdiction over him under due process clause and District long-arm statute. U.S.C. Const.Amend. 5; D.C. Code 1981, § 13-423(a)(1). *Doe v. Islamic Salvation Front*, 993 F. Supp. 3, 1998 U.S. Dist. LEXIS 1105 (1998).

Estate of former ruler of Emirate of Dubai, son of ruler who was brother of current ruler of Dubai and was minister of defense for United Arab Emirates (UAE), and companies which were allegedly personal holding companies and alter egos of estate and brother were subject to personal jurisdiction under District of Columbia long-arm statute in action based on allegations that ruler and brother had been involved in attempt to illegally and secretly take over banks; action alleged that defendants had acted as fraudulent record shareholders of banks, accepted sham loans, and joined in acts to perpetuate secret ownership of District-based institution. D.C. Code 1981, § 13-423(a). *First Am. Corp. v. Al-Nahyan*, 948 F. Supp. 1107, 1996 U.S. Dist. LEXIS 17882 (1996).

Under District of Columbia long-arm statute, Ohio accounting firm that provided accounting and auditing services to corporate client during period when client entered into certain consulting agreements did not itself "transact business" in District for purposes of client's former counsel's third-party claims for contribution and indemnification in connection with malpractice claims asserted against counsel; fact that counsel's District of Columbia firm hired accounting firm did not establish that accounting firm itself transacted business in District; moreover, correspondence sent to District of Columbia was incidental to accounting firm's primary relationship with client's Ohio office, and there were no allegations that accounting firm's preparation of client's tax returns in any way related to instant action. D.C. Code 1981, § 13-423(a)(1), (b). *Richter v. Analox Corp.*, 940 F. Supp. 353, 1996 U.S. Dist. LEXIS 15081 (1996).

Nonresident defendant's contract with forum resident will not automatically establish mini-

mum contact sufficient to confer personal jurisdiction under District of Columbia's long-arm statute; factors that must be considered include prior negotiations and contemplated future consequences, along with terms of contract and parties' actual course of dealing. D.C. Code 1981, § 13-423(a)(1). *Schwartz v. CDI Japan*, 938 F. Supp. 1, 1996 U.S. Dist. LEXIS 8866 (1996).

Company licensed by Monaco to act as accounting authority with respect to satellite telecommunications by the Republic of Zaire and its president and other officials did not transact business in District of Columbia within meaning of District long-arm statute, though telecommunications provider whose facilities were used was located in District when it accepted appointment of Zaire's accounting authority, there were telephone and fax communications between provider and accounting authority, and accounting authority agreed that it would pay certain amounts due, where accounting authority had nothing to do with choice of provider's service by Zaire, benefit to accounting authority did not rise out of its activities in District but from Zaire's use of plaintiff's facilities in other jurisdictions, and fax communications concerning mistake by provider did not evidence any purpose on part of accounting authority to do business in District. D.C. Code 1981, § 13-423(a)(1). *COMSAT Corp. v. Finshipyards S.A.M.*, 900 F. Supp. 515, 1995 U.S. Dist. LEXIS 14701 (1995).

In order to subject nonresident defendant to binding judgment based on out-of-state service, due process requires that defendant have minimum contacts with forum in which action is brought of such character that maintenance of suit would not offend traditional motions of fair play and substantial justice. D.C. Code 1981, § 13-423; U.S. Const.Amend. 5, 14. *Dorman v. Thornburgh*, 740 F. Supp. 875, 1990 U.S. Dist. LEXIS 8671 (1990), appeal dismissed in part by, affirmed in part by 955 F.2d 57, 293 U.S. App. D.C. 364, 1992 U.S. App. LEXIS 1430 (1992).

Trial court had personal jurisdiction over computer program developer pursuant to the District of Columbia long-arm statute and consistent with principles of due process, in action relating to agreement to develop computer programs for use by health-care facilities, where it was alleged that agreement was negotiated in District, business discussions pertaining to progress of programs' development took place in District, program was developed in District, and agreement contemplated sale of programs to health-care facilities in District. D.C. Code 1981, § 13-423(a)(1); U.S. Const.Amend. 14. *Abramson v. Wallace*, 706 F. Supp. 1, 1989 U.S. Dist. LEXIS 1474 (1989).

District court had personal jurisdiction under the District of Columbia long-arm statute over

breach of contract action, where contract was signed in the District of Columbia, attendant meetings were held in D.C. to negotiate and facilitate the contract, and one of the terms provided for deposits into a "lock box" provided by a D.C. bank. D.C. Code 1981, § 13-423(a). *Clements Distributing Co. v. Celebrity Products, Inc.*, 699 F. Supp. 322, 1988 U.S. Dist. LEXIS 15619 (1988).

Under statute authorizing personal jurisdiction over a person transacting any business in the District of Columbia, all that is required is some affirmative act by which defendant brings itself within the jurisdiction and establishes minimum contacts. D.C. Code 1973, § 13-423(a)(1). *La Brier v. A.H. Robins Co.*, 551 F. Supp. 53, 1982 U.S. Dist. LEXIS 16747 (1982).

A single act in the jurisdiction by defendant, under some circumstances, may be sufficient to constitute "transacting business," and thereby confer jurisdiction. D.C. Code 1973, § 13-423; U.S. Const. Amend. 14. *Mitchell Energy Corp. v. Mary Helen Coal Co.*, 524 F. Supp. 558, 1981 U.S. Dist. LEXIS 9910 (1981).

In action by employees against employer and two union locals alleging that shifting of three of employer's stores from one union local's jurisdiction to another violated employer's collective bargaining agreement reserving jurisdiction over the stores to specified union local, the District Court for the District of Columbia lacked in personam jurisdiction over the union local to whose jurisdiction the stores were shifted, as the only evidence of union local's contacts with the District of Columbia involved the filing of a jurisdictional claim with the international union, which was not party to the action, and appearances at hearings on the claim held in the District of Columbia. D.C. Code §§ 13-422, 13-423. *Doby v. Safeway Stores, Inc.*, 505 F. Supp. 934, 1981 U.S. Dist. LEXIS 11473 (1981).

Court would not create rule completely precluding consideration of contacts with jurisdiction occurring slightly outside period of limitations in process of determining whether court could assert jurisdiction over nonresident defendant. D.C. Code § 13-423(a)(1). *Meyers v. Smith*, 460 F. Supp. 621, 1978 U.S. Dist. LEXIS 14352 (1978).

In view of facts that salesman who negotiated plaintiff's distributorship contract was a corporate sales representative whose commission was paid by Florida corporation, that only connection that defendant president of corporation had with the contract was that her signature as corporation president appeared on it, that although various individuals traveled from Florida to District of Columbia to try to placate plaintiff, they were all corporate representatives and that letter defendant sent plaintiff was merely one sent by corporation's president to welcome plaintiff, District of Columbia

new long-arm jurisdictional statute was unavailable to plaintiff as a basis for jurisdiction. D.C. Code §§ 13-421, 13-423. *Security Bank, N. A. v. Tauber*, 347 F. Supp. 511, 1972 U.S. Dist. LEXIS 12035 (1972).

Virginia physician's use of telephone to make single call to drugstore in District did not establish that physician was transacting business in District such that exercise of personal jurisdiction over physician in patient's case for failure to inform of risks of prescribed drug came within reach of long-arm statute; physician was not licensed in District, he did not maintain professional practice or residence in District, he did not advertise in District, he never treated or examined patient in District, and telephone call to drugstore in District was strictly to accommodate patient. *Harris v. Omelon*, 985 A.2d 1103, 2009 D.C. App. LEXIS 609 (2009).

Mexican elevator repair company did not transact business within the District as required to assert jurisdiction over the company under the long-arm statute, where company supplied another company, which did business throughout the United States, with elevator parts that may or may not have been used in the District. *Gonzalez v. Internacional de Elevadores, S.A.*, 891 A.2d 227, 2006 D.C. App. LEXIS 21 (2006).

The "transacting business" standard for exercising long-arm jurisdiction is co-extensive with the minimum contacts necessary to establish personal jurisdiction under the Due Process Clause. *Digital Broad. Corp. v. Rosenman & Colin, LLP*, 847 A.2d 384, 2004 D.C. App. LEXIS 162 (2004).

Even a small amount of in-jurisdiction business activity is generally enough to permit the conclusion, with respect to determination of personal jurisdiction, that a nonresident defendant has transacted business here. U.S.C. Const. Amends. 5, 14; D.C. Code 1981, § 13-423(a)(1), (b). *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 2000 D.C. App. LEXIS 43 (2000).

Where Peruvian corporation did not initiate or pursue contract negotiations in District of Columbia but all such was done by partnership, no services were to be provided by Peruvian corporation in District of Columbia, and sole contact which Peruvian corporation had within jurisdiction was delivery, by courier, from Peru to District of Columbia at request and expense of partnership of duplicate original contract executed by corporation in Peru, such act of delivery, even when coupled with subsequent conduct of courier in accepting payment and later returning it, was insufficient to subject corporation to in personam jurisdiction in the District of Columbia. D.C. Code § 13-423(a)(1). *Bueno v. La Compania Peruana de*

Radiodifusion, S.A., 375 A.2d 6, 1977 D.C. App. LEXIS 448 (1977).

Where evidence was undisputed that events giving rise to litigation constituted only contact that Peruvian corporation ever had with District of Columbia, circumstances leading to litigation had to provide those minimal contacts consistent with due process which were required for jurisdiction. D.C. Code § 13-423. *Bueno v. La Compania Peruana de Radiodifusion, S.A.*, 375 A.2d 6, 1977 D.C. App. LEXIS 448 (1977).

Even a small amount of in-jurisdiction business activity is generally enough to permit conclusion that nonresident defendant served under long-arm statute has transacted business in district. D.C. Code § 13-423(a)(1). *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*, 355 A.2d 808, 1976 D.C. App. LEXIS 505 (1976).

To satisfy requirements of due process, nonresident defendant served under long-arm statute must have had sufficient minimum contacts with forum state to justify subjecting him to exercise of personal jurisdiction by the courts. D.C. Code § 13-423(a)(1). *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*, 355 A.2d 808, 1976 D.C. App. LEXIS 505 (1976).

— Negotiations as contacts, transacting business.

When nonresident defendant has solicited business relationship and contract calls for performance of work within District of Columbia, court may find that transaction has such a substantial connection with District of Columbia that the exercise of personal jurisdiction is permissible under District of Columbia's long-arm statute, and relevant considerations include prior negotiations and contemplated future consequences, along with terms of contract and parties' actual course of dealings. *Knowledgeplex, Inc. v. Metonymy, Inc.*, 574 F.Supp.2d 164, 2008 U.S. Dist. LEXIS 67431 (2008).

Buyers of cellular phone system lacked sufficient contact with District of Columbia to support personal jurisdiction in suit brought by seller claiming breach of contract; system in question was located in Michigan and governed by Michigan law, there was no long-term relationship between buyers and seller after sale was completed, while negotiations took place in part by mail and wire into District of Columbia, where seller's transaction attorney was located, none of the principals were involved in negotiation within the District and it was mere fortuity, over which buyers had no control and from which buyers could derive no expectation of consequences, that negotiations involved District. D.C. Code 1981, § 13-423. *Cellutech,*

Inc. v. Centennial Cellular Corp., 871 F. Supp. 46, 1994 U.S. Dist. LEXIS 19588 (1994).

Discussions, conferences and meetings conducted within District of Columbia by nonresident corporation with reference to oral contract which was allegedly breached by defendants constituted such minimal contacts with districts that maintenance of action for breach of such contract did not offend traditional notions of fair play and substantial justice. D.C. Code §§ 13-423(a)(1), 13-424, 13-431, 13-431(a)(3). *Unidex Systems Corp. v. Butz Engineering Corp.*, 406 F. Supp. 899, 1976 U.S. Dist. LEXIS 17336 (1976).

Mere fact that sale of stainless steel tubing used in construction project in West Virginia may have been consummated in District of Columbia by distributor who was not acting as agent for manufacturers of tubing did not give jurisdiction under "long-arm" statute to federal court in District over action by buyers of tubing against manufacturers for damages for alleged defects in tubing. D.C. Code § 13-423(a)(1). *Norair Engineering Associates, Inc. v. Noland Co.*, 365 F. Supp. 740, 1973 U.S. Dist. LEXIS 11392 (1973).

— Plaintiff as source of contacts, transacting business.

Under District of Columbia long-arm statute [D.C. Code 1981, § 13-423(a)(1)], plaintiff may not depend on his own activity to establish existence of minimum contacts; defendant must in some way have voluntarily and purposefully availed himself of protection of District's laws. *Reiman v. First Union Real Estate Equity & Mortg. Inv.*, 614 F. Supp. 255, 1985 U.S. Dist. LEXIS 17782 (1985).

Where defendant was out-of-state corporation having no significant contacts with District of Columbia and was solicited by District corporation at its out-of-state home office and where contract was performed by defendant outside the jurisdiction, defendant's activities in jurisdiction did not constitute "transacting business" and subjecting defendant to jurisdiction of court based on its extremely limited contact with District of Columbia would violate requirements of due process. D.C. Code 1973, § 13-423; U.S. Const. Amend. 14. *Mitchell Energy Corp. v. Mary Helen Coal Co.*, 524 F. Supp. 558, 1981 U.S. Dist. LEXIS 9910 (1981).

A plaintiff cannot rely on its own activities, rather than those of a defendant, to establish requisite minimal contacts for personal jurisdiction. D.C. Code § 13-423(a)(1). *Environmental Research International, Inc. v. Lockwood Greene Engineers, Inc.*, 355 A.2d 808, 1976 D.C. App. LEXIS 505 (1976).

While paragraph (a)(7) specifically requires that the plaintiff reside in the District, that paragraph, especially in extended litigation, encompasses a movant-defendant even if he

was not the original plaintiff. *Heim v. Taylor*, 118 WLR 577 (Super. Ct. 1990).

— **Presence within District, transacting business.**

Fact that securities broker's business in District of Columbia was conducted in "cyber-space" through electronic transactions at Internet website, as opposed to being conducted through physical presence, would not preclude District of Columbia court from having personal jurisdiction over broker. *Gorman v. Ameritrade Holding Corp.*, 293 F.3d 506, 2002 U.S. App. LEXIS 11674 (C.A.D.C. 2002).

Fact that mayors from various cities discussed their respective public nuisance suits against gun dealers and manufacturers at a mayors' conference in the District of Columbia was insufficient to allow exercise of personal jurisdiction over mayors in civil conspiracy action by the dealers and manufacturers, under provision of D.C. long-arm statute subjecting those who transact business in D.C. to personal jurisdiction there. *Second Amendment Foundation v. U.S. Conference of Mayors*, 274 F.3d 521, 2001 U.S. App. LEXIS 27009 (C.A.D.C. 2001).

Virginia-based competitor's actions did not constitute "transacting business" or causing a tortious injury within District of Columbia within meaning of District's long-arm statute; there was no evidence that competitor of restaurant chain regularly did or solicited business or engaged in any other persistent course of conduct in the District, as competitor conducted no business on or through its informational websites which were accessible from the District, and its consideration of a possible business expansion into the District consisted of one isolated phone call. *Sweetgreen, Inc. v. Sweet Leaf, Inc.*, 2012 WL 975415 (2012).

German corporation's flat-fee license agreement granting its United States franchisee an exclusive license to operate restaurants in the United States did not establish that corporation was transacting business in the District of Columbia, in which two of franchisee's restaurants were located, so as to support exercise of specific personal jurisdiction under District of Columbia's long-arm statute in copyright infringement action. *Rundquist v. Vapiano SE*, 798 F.Supp.2d 102, 2011 U.S. Dist. LEXIS 78781 (2011).

Italian manufacturer's contacts with District of Columbia had sufficient nexus to distributor's claims to justify exercise of specific personal jurisdiction over manufacturer in distributor's action alleging breach of contract, unjust enrichment, and quantum meruit, where manufacturer entered into contract because it was interested in extending its market to United States, and its decision to register wholly-owned subsidiary and alter ego in District was part of its calculated expansion strategy that

was subject of, and effectuated pursuant to, parties' contract. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 753 F.Supp.2d 141, 2010 U.S. Dist. LEXIS 128188 (2010).

Italian manufacturer "transacted business" in District, within meaning of District of Columbia's long-arm statute, and thus was subject to specific personal jurisdiction in District in distributor's action alleging breach of contract, unjust enrichment, and quantum meruit, where manufacturer registered its wholly-owned subsidiary and alter ego in District, sent monthly wire transfers to distributor's office in District, and had numerous communications with distributor in District. *IMark Marketing Services, LLC v. Geoplast S.p.A.*, 753 F.Supp.2d 141, 2010 U.S. Dist. LEXIS 128188 (2010).

Local cable television company that provided and supported national cable television company's services had no ability to control national cable company, particularly in regard to advertising decisions, and was, therefore, not in an agency relationship with national cable company, under District of Columbia law, as would allow federal court in District of Columbia to assert personal jurisdiction over local company, which had provided service to subscriber in Maryland, in cable television subscriber's action against cable company and credit agencies for violation of Fair Debt Collection Practices Act and Fair Credit Reporting Act; although the companies appeared to be engaged in a common enterprise, national cable company controlled purposes of company website, as well as its content, format, style, and overall design, local cable company only provided website with its particular channel lineups and pricing, and national cable company created national advertising campaigns in which local cable company would choose whether or not to participate. *Tall v. Comcast of Potomac, LLC*, 729 F.Supp.2d 342, 2010 U.S. Dist. LEXIS 79983 (2010), affirmed by 439 Fed. Appx. 1, 2011 U.S. App. LEXIS 19292 (D.C. Cir. 2011).

Attendance at, and sponsorship of, a trade show is not, without more, sufficient to confer jurisdiction over a non-resident defendant under the section of the District of Columbia (D.C.) long-arm statute authorizing courts to exercise jurisdiction over any person who transacts any business in D.C. because where a trade show takes place will be, in many cases, fortuitous, and fortuitous contacts cannot give rise to personal jurisdiction. *Citadel Inv. Group, L.L.C. v. Citadel Capital Co.*, 699 F.Supp.2d 303, 2010 U.S. Dist. LEXIS 31403 (2010).

Non-resident members of Broadcasting Board of Governors were physically within District of Columbia when they took alleged actions giving rise to former contractor's constitutional tort claims, including termination of contract for translation services, as required for court to have personal jurisdiction over mem-

bers. *Navab-Safavi v. Broad. Bd.*, 650 F.Supp.2d 40, 2009 U.S. Dist. LEXIS 79579 (2009), affirmed by, remanded by 637 F.3d 311, 394 U.S. App. D.C. 377, 2011 U.S. App. LEXIS 3868, 31 I.E.R. Cas. (BNA) 1542, 39 Media L. Rep. (BNA) 1417 (2011).

Non-resident mortgage company president “was more than an employee” of company, precluding application of fiduciary shield doctrine, and thus subsection of District of Columbia long-arm statute allowing personal jurisdiction over person transacting business in District of Columbia authorized personal jurisdiction over executive in action alleging company violated Fair Housing Act; company’s connections with District of Columbia could be attributed to company president, who was alleged to have personally developed and implemented discriminatory lending policies challenged in action. *Nat’l Cmty. Reinvestment Coalition v. NovaStar Fin., Inc.*, 631 F.Supp.2d 1, 2009 U.S. Dist. LEXIS 53130 (2009).

Virginia restaurant transacted business in District of Columbia, and thus was subject to personal jurisdiction in District in former employees’ action alleging wage payment and overtime violations, even though restaurant’s advertising in District did not give rise to employees’ claims, where restaurant’s main bank account was located in District, restaurant’s owner and managers made frequent trips to deposit funds in bank located in District, and, at some point during dates cited in complaint, employees were required to cash pay checks drawing on same or associated accounts held at that bank. *Ventura v. Bebo Foods, Inc.*, 595 F.Supp.2d 77, 2009 U.S. Dist. LEXIS 7039 (2009).

Restaurant owner transacted business in District of Columbia, and thus was subject to personal jurisdiction in District in former employees’ action alleging wage payment and overtime violations, where owner operated restaurant and offered cooking classes in District during relevant period. *Ventura v. Bebo Foods, Inc.*, 595 F.Supp.2d 77, 2009 U.S. Dist. LEXIS 7039 (2009).

A failure to allege that the defendants physically conducted business within the District of Columbia is not alone fatal to jurisdiction under the District’s long-arm statute. *Doe I v. State of Israel*, 400 F.Supp.2d 86, 2005 U.S. Dist. LEXIS 27471 (2005).

Federal district court in District of Columbia did not have personal jurisdiction under District of Columbia long-arm statute over Director of Virginia Department of Corrections (VDOC), Warden of state prison, and individuals or entities employed by VDOC, in §§ 1983 lawsuit brought by prisoner of District of Columbia who was subject to prisoner custody arrangement with Virginia and who alleged that he was subject to variety of constitutional

deprivations, since Virginia defendants did not live in District of Columbia, they did not transact business in District, and all acts alleged by prisoner to connect defendants to forum related to actions taken in their official capacities. *Ibrahim v. District of Columbia*, 357 F.Supp.2d 187, 2004 U.S. Dist. LEXIS 27119 (2004).

Federal inmate’s former attorney was not subject to personal jurisdiction in District of Columbia in inmate’s civil rights suit, where attorney was based in Missouri, attorney did not reside in or have office in District, none of tortious acts alleged by inmate occurred in District, and inmate did not suffer injury as result of attorney’s actions that occurred in District. *Ibrahim v. District of Columbia*, 357 F.Supp.2d 187, 2004 U.S. Dist. LEXIS 27119 (2004).

General personal jurisdiction did not exist over Swedish national telephone company in federal district court sitting in District of Columbia, in consultancy firm’s action for damages, return of property, and cease and desist order arising from Swedish corporation’s alleged takeover of consultancy firm’s Swedish operations, when telephone company was not domiciled in, organized under laws of, or maintaining principal place of business in District of Columbia, telephone company did not have continuing corporate presence in District of Columbia directed at advancing its corporate directives, and had no real property there, did not contract to insure or to supply services there, did not have marital or parent-and-child relationship there, and caused no injury there by either local or foreign act or omission. *BPA Int’l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

A single act in the District of Columbia may be enough to constitute “transacting business” under the District’s long-arm statute; moreover, a defendant need not ever be physically present in the District to “transact business” within the meaning of the statute. *D.C. Code 1981, § 13-423(a)(1)*. *Material Supply Int’l, Inc. v. Sunmatch Indus. Co.*, 62 F.Supp.2d 13, 1999 U.S. Dist. LEXIS 13481 (1999).

Defendant need not transact extensive business in the District of Columbia to be subject to personal jurisdiction in D.C.; nonresident defendant need not have been physically present in the District to be subject to its personal jurisdiction. *D.C. Code 1981 § 13-423(a)*. *BCCI Holdings (Lux.), S.A. v. Khalil*, 20 F.Supp.2d 1, 1997 U.S. Dist. LEXIS 22986 (1997).

Nonresident defendant need not have been physically present in District of Columbia to be subject to personal jurisdiction there under long-arm statute based on transaction of business in district. *D.C. Code 1981, § 13-423(a)*.

First Am. Corp. v. Al-Nahyan, 948 F. Supp. 1107, 1996 U.S. Dist. LEXIS 17882 (1996).

Nonresident defendant may be considered to have transacted business within meaning of District of Columbia long-arm statute [D.C. Code 1981, § 13-423(a)(1)] without ever having been physically present in District of Columbia and, under certain circumstances, even single act may be sufficient to bring defendant within purview of statute. *Reiman v. First Union Real Estate Equity & Mortg. Inv.*, 614 F. Supp. 255, 1985 U.S. Dist. LEXIS 17782 (1985).

Defendant need not be physically present in District of Columbia in order to "transact business" therein, within meaning of District of Columbia long-arm statute. D.C. Code 1981, § 13-423. *Federal Deposit Ins. Corp. v. O'Donnell*, 136 B.R. 585, 1991 U.S. Dist. LEXIS 11882 (1991).

Trial court lacked personal jurisdiction over former condominium building owner pursuant to forum's long-arm statute in action by condominium unit owner arising from alleged fraudulent sales of Maryland building as part of bankruptcy proceedings, where building owner was a Maryland resident, did not own any D.C. property, and worked for a Maryland corporation that he owned, and owner's limited business dealing in D.C. had nothing to do with actions giving rise to litigation. *Kissi v. Hardesty*, 3 A.3d 1125, 2010 D.C. App. LEXIS 516 (2010).

Trial court lacked personal jurisdiction over former condominium building owner pursuant to forum's long-arm statute in action by condominium unit owner arising from alleged fraudulent sales of Maryland building as part of bankruptcy proceedings, where building owner was a Maryland resident, did not own any D.C. property, and worked for a Maryland corporation that he owned, and owner's limited business dealing in D.C. had nothing to do with actions giving rise to litigation. *Kissi v. Hardesty*, 3 A.3d 1125, 2010 D.C. App. LEXIS 516 (2010).

To fall within purview of transacting any business provision of long-arm statute, nonresident defendant need not have been physically present in the District and, under certain circumstances, single act may be sufficient to constitute transacting business. (Per Curiam opinion joined by four Judges with one Judge concurring in result.) D.C. Code 1973, §§ 13-423, 13-423(a)(1); U.S. Const. Amendments. 5, 14. *Mouzavires v. Baxter*, 434 A.2d 988, 1981 D.C. App. LEXIS 347 (1981), writ of certiorari denied by 455 U.S. 1006, 102 S. Ct. 1643, 71 L. Ed. 2d 875, 1982 U.S. LEXIS 1293, 50 U.S.L.W. 3713 (1982).

With respect to transacting any business provision of long-arm statute, the most critical inquiry is not whether nonresident defendant is specifically present in forum but whether

defendant's contacts with forum are of such quality and nature that they manifest a deliberate and voluntary association with the forum. (Per Curiam opinion joined by four Judges with one Judge concurring in result.) D.C. Code 1973, §§ 13-423, 13-423(a)(1); U.S. Const. Amendments. 5, 14. *Mouzavires v. Baxter*, 434 A.2d 988, 1981 D.C. App. LEXIS 347 (1981), writ of certiorari denied by 455 U.S. 1006, 102 S. Ct. 1643, 71 L. Ed. 2d 875, 1982 U.S. LEXIS 1293, 50 U.S.L.W. 3713 (1982).

Superior court had personal jurisdiction over non-resident corporations in patient's negligence action under "transacting business in the District of Columbia" provision of long-arm statute, where corporations provided a wide range of health care services within the District of Columbia on regular and on-going basis, and patient's claim related to and had a discernible relationship with corporations' business. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

California corporation's distribution of copies of Chinese newspapers in District of Columbia is sufficient to authorize personal jurisdiction over the corporation under subsection (a)(1) on a claim for relief related to defendant's transaction of business in the District of Columbia. *Bingzhang v. Renmin Ribao*, 114 WLR 1545 (Super. Ct. 1986).

— Purposeful conduct, transacting business.

Swedish law firm, its managing partner, and "of counsel" attorney "transacted business" in District of Columbia and thus invoked benefits and protections of laws of District, as was required for exercise of personal jurisdiction over firm and its attorneys in action brought against them by Swedish scientist and corporation, of which he was managing director and sole shareholder, for claims arising from their improper representation in numerous patent infringement actions; firm deliberately reached out beyond Sweden and voluntarily negotiated and entered into contract with firm in District, on behalf of their Swedish client, in order to obtain benefits of associating with District law firm in connection with scientist receiving legal representation in United States, and firm engaged in transaction which had substantial connection with District and which firm must have known would have consequences in District. *Lans v. Adduci Mastriani & Schaumberg L.L.P.*, 786 F.Supp.2d 240, 2011 U.S. Dist. LEXIS 54463 (2011).

Insurance agent transacted business in District of Columbia, and thus, was subject to District of Columbia's long-arm statute during district court's determination regarding agent's motion to dismiss immigrant's claims of fraudulent misrepresentation, breach of contract, gross negligence, unlawful trade practices, and violation of District of Columbia Consumer

Protection Procedures Act for lack of jurisdiction, where immigrant alleged that he paid agent in District of Columbia, and that check was under immigrant's name and his address was in District of Columbia. *Lans v. Adduci Mastriani & Schaumberg L.L.P.*, 786 F.Supp.2d 240, 2011 U.S. Dist. LEXIS 54463 (2011).

Federal district court in District of Columbia could not assert personal jurisdiction over municipal housing authority in Louisiana in manner consistent with due process under District of Columbia long-arm statute regarding contract work performed in Louisiana and governed by Louisiana law, since authority did not have minimum contacts grounded in some act by which it had purposefully availed itself of privilege of conducting activities with District of Columbia, thus invoking the benefits and protections of its laws. *Fuentes-Fernandez & Company, PSC v. Caballero & Castellanos, PL*, 770 F.Supp.2d 277, 2011 U.S. Dist. LEXIS 28586 (2011).

Federal district court in District of Columbia did not have personal jurisdiction over municipal housing authority in Louisiana under District of Columbia long-arm statute regarding contract work performed in Louisiana and governed by Louisiana law, since housing authority did not transact business in, contract for services in, cause tortuous injury in, regularly soliciting business in, engage in persistent course of conduct in, or derive substantial revenue from goods used or consumed in, Washington, D. C. *Fuentes-Fernandez & Company, Fuentes-Fernandez & Company, PSC v. Caballero & Castellanos, PL*, 770 F.Supp.2d 277, 2011 U.S. Dist. LEXIS 28586 (2011).

While the District of Columbia long-arm statute is interpreted broadly and factual disputes are to be resolved in favor of the plaintiff, the plaintiff must allege some specific facts evidencing purposeful activity by the defendant in the District of Columbia by which it invoked the benefits and protections of the District's laws. *FC Inv. Group LC v. IFX Mkts., Ltd.*, 479 F.Supp.2d 30, 2007 U.S. Dist. LEXIS 7919 (2007), affirmed by 529 F.3d 1087, 381 U.S. App. D.C. 383, 2008 U.S. App. LEXIS 13312 (2008).

Under the District of Columbia long-arm statute, personal jurisdiction may be based in part on a defendant's maintenance of a website that, in conjunction with other contacts with the District, supports an inference of purposeful availment. *Doe I v. State of Israel*, 400 F.Supp.2d 86, 2005 U.S. Dist. LEXIS 27471 (2005).

Operation of website by United States congregation, allegedly to raise funds for settlement movement in West Bank, was not basis for personal jurisdiction over congregation in action by Palestinian residents of West Bank, where residents did not assert that donations

were made from within District or that residents of District were harmed, operation of website accessible in District was not purposeful availment, and website was essentially passive, not highly interactive. *Doe I v. State of Israel*, 400 F.Supp.2d 86, 2005 U.S. Dist. LEXIS 27471 (2005).

For there to be personal jurisdiction under District of Columbia's long-arm statute, plaintiff must allege some specific facts evidencing purposeful activity by defendants in District of Columbia by which they invoked benefits and protections of its laws and specific acts connecting defendants with forum. *Robinson v. Ashcroft*, 357 F.Supp.2d 142, 2004 U.S. Dist. LEXIS 27141 (2004).

In determining whether nonresident defendant's contacts with District of Columbia are sufficient under "transacting business" provision of its long-arm statute to support exercise of personal jurisdiction in District over defendant, district court must look at quality and nature of contacts, and contacts must illustrate deliberate and voluntary association with District on part of defendant. *Helmer v. Doletskeya*, 290 F.Supp.2d 61, 2003 U.S. Dist. LEXIS 20357 (2003), affirmed in part and reversed in part by 393 F.3d 201, 364 U.S. App. D.C. 178, 2004 U.S. App. LEXIS 26525 (2004).

Nonresident corporation that retrofitted mast on a news van which struck power line, electrocuting a news cameraman, purposefully transacted business within forum jurisdiction and had sufficient minimum contacts with forum, justifying forum court's exercise of personal jurisdiction over nonresident corporation, in cameraman's personal injury action, under both the Due Process Clause and the District of Columbia's long-arm statute; corporation had contract with forum-based corporation, for which it custom retrofitted and delivered news van, cost of sales transaction was significant, contract indicated that van would be used within forum jurisdiction, corporation delivered van directly to forum, and van itself was related to personal injury claim. *Manifold v. Wolf Coach, Inc.*, 231 F.Supp.2d 58, 2002 U.S. Dist. LEXIS 21911 (2002).

Defendant's awareness that the stream of commerce may or will sweep its product into the forum state does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum state, for purposes of determining whether court has personal jurisdiction over the defendant. *Formica v. Cascade Candle Co.*, 125 F.Supp.2d 552, 2001 U.S. Dist. LEXIS 116 (2001).

A nonresident defendant has minimum contacts with a jurisdiction, so that exercise of personal jurisdiction over defendant is consistent with due process clause, when it has purposefully directed its activities at residents of

the forum, and the litigation results from alleged injuries that arise out of or relate to those activities; if a defendant purposefully directed its activities towards a forum, it can expect to be subject to jurisdiction in that forum. *United States v. Philip Morris, Inc.*, 116 F.Supp.2d 116, 2000 U.S. Dist. LEXIS 14020 (2000), modified by 130 F. Supp. 2d 96, 2001 U.S. Dist. LEXIS 1173, RICO Bus. Disp. Guide P10013 (D.D.C. 2001).

Focus when determining whether nonresident defendant transacted business, justifying exercise of personal jurisdiction under District of Columbia's long-arm statute, is on quality and nature of contacts; contacts must illustrate deliberate and voluntary association with forum on part of defendant. D.C. Code 1981, § 13-423(a)(1). *Schwartz v. CDI Japan*, 938 F. Supp. 1, 1996 U.S. Dist. LEXIS 8866 (1996).

Jordanian currency exchange and its agent, that allegedly were involved in check-kiting scheme with District of Columbia subsidiary of Jordanian banking concern to detriment of New York bank, did not purposefully direct their activities in any way towards District of Columbia and, therefore, were not subject to personal jurisdiction in compliance with due process clause, where neither exchange nor agent maintained bank account in District that was relevant to lawsuit, and where neither currency exchange nor agent transacted any business relevant to bank's claims. D.C. Code 1981 § 13-423(a)(1); U.S. Const.Amend. 14. *First Chicago International v. United Exchange Co.*, 655 F. Supp. 787, 1987 U.S. Dist. LEXIS 2022 (1987), affirmed in part and reversed in part by 836 F.2d 1375, 267 U.S. App. D.C. 27, 1988 U.S. App. LEXIS 490, 10 Fed. R. Serv. 3d (Callaghan) 584 (1988).

Contacts supporting exercise of personal jurisdiction over person by the District of Columbia on basis that the person has transacted business in the District must represent deliberate and voluntary association with the forum. D.C. Code 1981, § 13-423(a)(1). *Chrysler Corp. v. General Motors Corp.*, 589 F. Supp. 1182, 1984 U.S. Dist. LEXIS 16318 (1984).

Under District of Columbia long-arm statute relating to persons transacting any business in the District, a defendant's affiliations with the forum should be of quantity and quality sufficient to demonstrate purpose to obtain benefits and protections of the forum. D.C. Code 1981, § 13-423(a)(1). *Chrysler Corp. v. General Motors Corp.*, 589 F. Supp. 1182, 1984 U.S. Dist. LEXIS 16318 (1984).

Listing of doctors, who practiced outside of District of Columbia, in District of Columbia telephone directory and in a directory of local physicians made available at the International Monetary Fund health center did not constitute transacting business for purposes of personal jurisdiction under the long-arm statute; doctors

did not actively solicit patients in the District, but rather maintained passive listings of contact information, and thus, it was unfair to infer that doctors should have anticipated being subject to suit in the District of Columbia as a result of the listings. *Etchebarne-Bourdin v. Radice*, 982 A.2d 752, 2009 D.C. App. LEXIS 539 (2009).

Fact that the doctors, who practiced outside of District of Columbia, maintained medical licenses to practice in the District could not, without more, serve as a basis for jurisdiction under the "transacting any business" subsection of the long-arm statute. *Etchebarne-Bourdin v. Radice*, 982 A.2d 752, 2009 D.C. App. LEXIS 539 (2009).

Telephone call patient made to doctor, who practiced outside the District of Columbia, could not serve as a basis for jurisdiction over doctor under the long-arm statute and remain consistent with the limits of due process. *Etchebarne-Bourdin v. Radice*, 982 A.2d 752, 2009 D.C. App. LEXIS 539 (2009).

For an entity to be transacting business within the District of Columbia and to be subject to personal jurisdiction under the "transacting business" prong of the long-arm statute, some purposeful, affirmative activity within the District of Columbia is required. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

Mere foreseeability that a defendant's product would enter the District of Columbia alone is not enough to establish personal jurisdiction consistent with the due process clause; the foreseeability relevant to the personal jurisdiction analysis is that the defendant's conduct and connection with the forum state are such that he should reasonably anticipate being hauled into court there. *Holder v. Haarmann & Reimer Corp.*, 779 A.2d 264, 2001 D.C. App. LEXIS 174 (2001).

Venue generally.

Plaintiff's assertion that venue in District of Columbia was proper because he was denied access to courts in Seventh Circuit was insufficient to establish personal jurisdiction over nonresident defendants in action concerning dispute over property located in Wisconsin, absent assertion that any defendant lived in or had principal place of business in District, existence of adequate basis to assert specific personal jurisdiction under District's long-arm statute, or allegation that any defendant had contacts with District, plaintiff's alleged harm arose from defendants' conduct in transacting business or supplying services in District, or occurrence of tortious injury in District. *Lammers Kurtz v. United States*, 779 F.Supp.2d 50, 2011 U.S. Dist. LEXIS 44548 (2011).

Venue in District of Columbia was proper, in employee's racial discrimination action against both employer's parent corporation and its subsidiary, where parent corporation was subject to personal jurisdiction under District of Columbia's long-arm statute by virtue of its inextricable links to and control over subsidiary, which operated businesses in the District of Columbia. *Johnson-Tanner v. First Cash Fin. Servs.*, 239 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 335 (2003).

Venue for malpractice suit by California tort plaintiff's children against Pennsylvania counsel who advised them not to include their claims in father's suit was properly in District of Columbia, where father's suit was litigated. *Jacobsen v. Oliver*, 201 F.Supp.2d 93, 2002 U.S. Dist. LEXIS 7938 (2002).

Court may transfer case to another district even though it lacks personal jurisdiction over defendants, but decision whether to do so is in court's discretion. 18 U.S.C. § 1406(a); D.C. Code 1981, § 13-423. *Cellutech, Inc. v. Centennial Cellular Corp.*, 871 F. Supp. 46, 1994 U.S. Dist. LEXIS 19588 (1994).

A federal court may pretermit personal jurisdiction analysis by finding that venue is improper when to do so would avoid decision on close jurisdictional question with constitutional implications. *Trenwyth Industries, Inc. v. Burns & Russell Co.*, 701 F. Supp. 852, 1988 U.S. Dist. LEXIS 14166 (1988).

District of Columbia could not, consistent with commerce clause, require Maryland company to comply with District's licensing scheme, and thus, Maryland company could not be deemed to be doing business in the District and venue of trademark action was not proper in the District under federal venue statute; Maryland company had no offices or employees in the District and its advertising in the District consisted of only catalogue publications as well as yellow pages entry, and Maryland company had sold its product directly to only one and perhaps two District purchasers within the last two years. 18 U.S.C. § 1391(c); U.S. Const. Art. 1, § 8, cl. 3. *Trenwyth Industries, Inc. v. Burns & Russell Co.*, 701 F. Supp. 852, 1988 U.S. Dist. LEXIS 14166 (1988).

Trademark claim that Maryland company included photographs of product actually produced by plaintiff in advertising materials Maryland company submitted to industry trade publication arose in Maryland, rather than District of Columbia, and thus, venue in District of Columbia was improper; allegedly illegal advertising was prepared in Maryland, was mailed for publication from Maryland, and was received in Maryland as well as in the District of Columbia. 18 U.S.C. § 1391(b). *Trenwyth Industries, Inc. v. Burns & Russell Co.*, 701 F. Supp. 852, 1988 U.S. Dist. LEXIS 14166 (1988).

§ 13-424. Service outside the District of Columbia.

When the exercise of personal jurisdiction is authorized by this subchapter, service may be made outside the District of Columbia.

(July 29, 1970, 84 Stat. 549, Pub. L. 91-358, title I, § 132(a).)

Prior Codifications. — 1981 Ed., § 13-424. 1973 Ed., § 13-424.

CASE NOTES

ANALYSIS

Due process.
In general.

Due process.

In order for a court properly to assert personal jurisdiction over a nonresident defendant, service of process on the nonresident must be both authorized by statute and within limits set by due process clause of the United States Constitution. U.S. Const. Amend. 5. *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913, 1980 U.S. Dist. LEXIS 16849 (1980).

In general.

Landlord that knew tenant's Colorado ad-

dress and telephone number could not serve tenant by posting summons for eviction action on premises and could have served tenant by mail requiring signed receipt; landlord was unable to locate anyone residing on premises. D.C. Code 1981, §§ 13-401, 13-402, 13-423(a)(5), 13-424, 13-431(a)(3), 45-1406; *Landlord and Tenant Rule 4. Frank Emmet Real Estate, Inc. v. Monroe*, 562 A.2d 134, 1989 D.C. App. LEXIS 145 (1989).

§ 13-425. Inconvenient forum.

When any District of Columbia court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss such civil action in whole or in part on any conditions that may be just.

(July 29, 1970, 84 Stat. 549, Pub. L. 91-358, title I, § 132(a).)

Prior Codifications. — 1981 Ed., § 13-425.

1973 Ed., § 13-425.

CASE NOTES

ANALYSIS

Availability of alternate forums.

Burden of proof.

Contracts, forum selection clause.

Courts within section.

Discretion of court.

Grounds considered.

—Connections with District, grounds considered.

—In general.

—Inconvenience to parties and witnesses, grounds considered.

—Public or private interest, grounds considered.

In general.

Jurisdiction.

Plaintiff's choice of forum.

Procedure, generally.

Purpose.

Remand.

Review.

—Decisions reviewable.

—In general.

Sua sponte dismissal.

Timing of motion.

Availability of alternate forums.

Sweden offered adequate alternative forum for claims for damages, return of property, and cease and desist order asserted by consultancy firm and its shareholders against Kingdom of Sweden, Swedish national telephone company, and Swedish corporation arising out of Swedish corporation's alleged takeover of firm's Swedish operations, and both public and private interests favored action being heard in Sweden rather than District of Columbia, warranting dismissal on grounds of forum non conveniens, given that access to sources of proof would be easier if case was heard in Sweden, where most if not all potential witnesses and evidence was likely located, alleged harm to firm appeared to have been caused in significant measure by requirements of Swedish law, none of events or parties had connection with District of Columbia, except that Sweden had embassy there, and local community, contrary to citizens of Sweden, were unlikely to have any special

interest in the litigation. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

Prerequisite for application of forum non conveniens doctrine is availability of alternative forum in which plaintiff's action may more appropriately be entertained. *Al Malik v. District of Columbia*, 703 A.2d 1250, 1998 D.C. App. LEXIS 4 (1998).

One overriding requirement for application of forum non conveniens is availability of alternative forum. *Guevara v. Reed*, 598 A.2d 1157, 1991 D.C. App. LEXIS 300 (1991).

When court approves or orders dismissal on forum non conveniens grounds, dismissal is conditioned on waiver of statute of limitations in alternative forum. *Guevara v. Reed*, 598 A.2d 1157, 1991 D.C. App. LEXIS 300 (1991).

Availability of another forum and pendency of litigation in another jurisdiction are among proper factors for court to consider in determining whether to dismiss plaintiff's lawsuit on grounds of forum non conveniens, but mere pendency of litigation elsewhere will not bar suit. *Sartori v. Society of American Military Engineers*, 499 A.2d 883, 1985 D.C. App. LEXIS 522 (1985).

Essential predicate to invocation of doctrine of forum non conveniens is the availability of an alternate forum. D.C. Code § 13-425. *Mobley v. Southern R. Co.*, 418 A.2d 1044, 1980 D.C. App. LEXIS 346 (1980).

Although plaintiff's residence is an important factor to be considered, forum non conveniens relief should be granted when it plainly appears to trial court that another forum is available which will best serve needs of public interest. *Carr v. Bio-Medical Applications of Washington, Inc.*, 366 A.2d 1089, 1976 D.C. App. LEXIS 420 (1976).

Essential premise of any application of doctrine of forum non conveniens is availability of an alternative forum. *Dorati v. Dorati*, 342 A.2d 18, 1975 D.C. App. LEXIS 419 (1975).

United States Court will rarely dismiss a case on ground of forum non conveniens when only alternative forum is the foreign one, even when claim sued upon arose in foreign country

and law of that country would govern. *Dorati v. Dorati*, 342 A.2d 18, 1975 D.C. App. LEXIS 419 (1975).

A prerequisite to dismissal on the grounds of forum non conveniens is the availability of an alternative forum in which the plaintiff may bring his or her action. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

The superior court may dismiss a case for forum non conveniens only if the defendants stipulate that they will consent to jurisdiction in the alternative forum and waive any defenses based on the applicable statutes of limitations in that forum. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

Dismissal of patient's respondeat superior claims against Maryland corporations that employed Maryland pharmacist who allegedly gave patient wrong prescription would be expressly conditioned upon corporations' filing of papers formally consenting to personal jurisdiction in Maryland and waiving any defenses based upon any applicable statutes of limitations. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

Burden of proof.

Under District of Columbia law, presumption in favor of enforcing forum selection clause may be overcome by strong showing that: (1) clause's formation was tainted by fraud, undue influence, or overweening bargaining power; (2) enforcement of clause would effectively deprive plaintiff of remedy, or would deny her her day in court due to unfairness of selected forum or grave inconvenience; or (3) enforcement would contravene strong public policy of forum in which suit is brought. *Byrd v. Admiral Moving & Storage, Inc.*, 355 F.Supp.2d 234, 2005 U.S. Dist. LEXIS 372 (2005).

Defendant seeking dismissal on forum non conveniens grounds has burden of establishing that an adequate alternative forum exists. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

In seeking dismissal on grounds of forum non conveniens, Sweden and Swedish national telephone company met burden of establishing that adequate alternative forum existed for claims for damages, return of property, and cease and desist order asserted by consultancy firm and its shareholders due to Swedish corporation's alleged takeover of firm's Swedish operations, in that telephone company's general counsel averred that claims could be asserted in courts of Sweden and that defendants were subject to jurisdiction of appropriate Swedish courts, and firm did not address issue in opposing motions to dismiss. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920

(2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

Where it is shown that neither party resides in the District of Columbia and the plaintiff's claim has arisen in another jurisdiction which has more substantial contacts with the cause of action, the burden normally allocated to the defendant to demonstrate why dismissal is warranted for forum non conveniens rests instead upon the plaintiff to show why it is not. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

To avoid dismissal on basis of forum non conveniens when neither party resides in the District of Columbia and the plaintiff's claim has arisen in another jurisdiction which has more substantial contacts with the cause of action, the plaintiff must show some reasonable justification for his institution of the action in the District of Columbia rather than in a state with which the suit is more significantly connected. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

An appellant complaining that the District of Columbia is an inconvenient forum has the heavy burden of showing that the trial court abused its broad discretion in denying the motion to dismiss on basis of forum non conveniens. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

After a trial has been held and judgment entered, the appellant will usually have to demonstrate substantial prejudice to succeed on claim that he was entitled to motion to dismiss on grounds of forum non conveniens. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

Party challenging forum selection clause must demonstrate: (1) the clause was induced by fraud or overreaching; (2) the contractually selected forum is so unfair and inconvenient as, for all practical purposes, to deprive the plaintiff of a remedy or of its day in court; or (3) enforcement would contravene a strong public policy of the forum where the action is filed. *Forrest v. Verizon Communs., Inc.*, 805 A.2d 1007, 2002 D.C. App. LEXIS 509 (2002).

Defendant has the burden of proving that the District is an inconvenient forum unless it is shown that neither party resides in the District and the plaintiff's claim has arisen in another jurisdiction which has more substantial contacts with the cause of action. *Blake v. Prof'l Travel Corp.*, 768 A.2d 568, 2001 D.C. App. LEXIS 53 (2001), writ of certiorari denied by 534 U.S. 1115, 122 S. Ct. 923, 151 L. Ed. 2d 887, 2002 U.S. LEXIS 543, 70 U.S.L.W. 3463 (2002).

Where neither party resides in District of Columbia and plaintiff's claim has arisen in another jurisdiction which has more substantial contacts with cause of action, burden normally allocated to defendant to demonstrate why dismissal is warranted for forum non con-

veniens rests instead upon plaintiff to show why it is not. *Eric T. v. National Med. Enters.*, 700 A.2d 749, 1997 D.C. App. LEXIS 200 (1997).

Defendant who invokes doctrine of *forum non conveniens* bears burden of establishing case for dismissal. *Neale v. Arshad*, 683 A.2d 160, 1996 D.C. App. LEXIS 216 (1996).

Plaintiff's choice of forum deserves less deference when he or she is nonresident of District of Columbia (D.C.), and burden may even shift to plaintiff to justify bringing suit in District when neither party resides in District. D.C. Code 1981, § 13-425. *Neale v. Arshad*, 683 A.2d 160, 1996 D.C. App. LEXIS 216 (1996).

Burden normally allocated to defendant to demonstrate why dismissal is warranted for *forum non conveniens* rests instead upon plaintiff to show why it is not where it is shown that neither party resides in jurisdiction and plaintiff's claim has arisen in another jurisdiction which has more substantial contacts with cause of action. D.C. Code 1981, § 13-425. *Mills v. Aetna Fire Underwriters Ins. Co.*, 511 A.2d 8, 1986 D.C. App. LEXIS 351 (1986).

Defendant bears heavy burden in seeking dismissal of an action on ground of *forum non conveniens*, and unless the balance is strongly in favor of defendant, plaintiff's choice of a forum should be given deference. *Forgotson v. Shea*, 491 A.2d 523, 1985 D.C. App. LEXIS 368 (1985).

Defendant claiming benefit of doctrine of *forum non conveniens* bears burden of establishing that balance of equitable considerations is strongly in his favor; unless defendant meets this heavy burden, plaintiff's choice of forum will not be disturbed. *Creamer v. Creamer*, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

Defendant has burden of proof in motion to dismiss for *forum non conveniens*, and unless balance is strongly in favor of defendant, plaintiff's choice of forum should rarely be disturbed. D.C. Code § 13-425. *Crown Oil & Wax Co. v. Safeco Ins. Co.*, 429 A.2d 1376, 1981 D.C. App. LEXIS 271 (1981).

Defendant has burden of proof in motion to dismiss based on *forum non conveniens*, and must overcome strong presumption in favor of plaintiff's choice of forum. *Consumer Federation of America v. Upjohn Co.*, 346 A.2d 725, 1975 D.C. App. LEXIS 256 (1975).

Generally, defendant claiming *forum non conveniens* has burden of establishing strong case for dismissal, and unless balance is strongly in favor of defendant, plaintiff's choice of forum should rarely be disturbed. *Wilburn v. Wilburn*, 192 A.2d 797, 1963 D.C. App. LEXIS 262 (App. 1963).

Where none of the parties resided in the District of Columbia and the plaintiff's claim arises in another jurisdiction that has more substantial contacts with the cause of action,

the burden normally allocated to the defendant to demonstrate why dismissal is warranted for *forum non conveniens* rests upon the plaintiff to show why it is not; the plaintiff bears the burden of showing some reasonable justification for instituting action in the forum state. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

Where neither party was a resident of the District of Columbia the burden normally allocated to the defendant to demonstrate why dismissal was warranted for *forum non conveniens* rested instead upon the plaintiff to show why it was not. District of Columbia *ex rel. Blackwell v. Jackson*, 119 WLR 609 (Super. Ct. 1991).

Contracts, forum selection clause.

Under the District of Columbia choice of law rules in contract cases, the contacts to be taken into account to determine the law applicable to an issue include: (a) the place of contracting, (b) the place of negotiation of the contract, (c) the place of performance, (d) the location of the subject matter of the contract, and (e) the domicile, residence, nationality, place of incorporation and place of business of the parties. *Wright v. Sony Pictures Entm't, Inc.*, 394 F.Supp.2d 27, 2005 U.S. Dist. LEXIS 5194 (2005).

Under District of Columbia law, choice-of-law provision governing contract claims does not cover tort claims arising from same underlying events unless parties so intend. *Minebea Co. v. Papst*, 377 F.Supp.2d 34, 2005 U.S. Dist. LEXIS 12709 (2005).

Under District of Columbia law, forum selection clause in contract for transport and storage of household goods establishing venue in Florida was not enforceable in shipper's action alleging negligence and breach of contract, where goods did not leave District of Columbia, carrier and its delegates all did business in District, clause was included in boilerplate contract, shipper was not sophisticated businessperson, and additional expense in bringing suit in Florida would effectively deprive shipper of her day in court. *Byrd v. Admiral Moving & Storage, Inc.*, 355 F.Supp.2d 234, 2005 U.S. Dist. LEXIS 372 (2005).

Under District of Columbia law, fact that contractual forum selection clause was not subject of free negotiation does not necessarily undermine its enforcement. *Byrd v. Admiral Moving & Storage, Inc.*, 355 F.Supp.2d 234, 2005 U.S. Dist. LEXIS 372 (2005).

Under District of Columbia law, factors to be considered in determining whether contract's forum selection clause is enforceable include convenience of forum given parties' expressed preference for that venue, and fairness of transfer in light of forum selection clause and parties' relative bargaining power. *Byrd v. Admiral*

Moving & Storage, Inc., 355 F.Supp.2d 234, 2005 U.S. Dist. LEXIS 372 (2005).

Under District of Columbia law, contractual forum selection clauses are prima facie valid, absent showing that enforcement would be unreasonable and unjust, or that clause was invalid for such reasons as fraud or overreaching. *Byrd v. Admiral Moving & Storage, Inc.*, 355 F.Supp.2d 234, 2005 U.S. Dist. LEXIS 372 (2005).

Consumer who subscribed to Internet digital subscriber line (DSL) service was provided adequate notice of the forum selection clause in service agreement, even though clause did not appear in all capital letters and was placed in the section entitled "General Provisions," rather than "Limitations of Liability and Remedies," where consumer entered contract by clicking an "Accept" button below scroll box containing agreement. *Forrest v. Verizon Communs., Inc.*, 805 A.2d 1007, 2002 D.C. App. LEXIS 509 (2002).

Unavailability of class action mechanism did not in itself make forum selection clause in subscription agreement for digital subscriber line (DSL) service unenforceable; even if forum selection clause was enforced, consumer could still have his day in court and given proximity of court specified in clause would have little difficulty in doing so. *Forrest v. Verizon Communs., Inc.*, 805 A.2d 1007, 2002 D.C. App. LEXIS 509 (2002).

Courts within section.

Statutory reference to "any District of Columbia court" in forum non conveniens statute does not include federal courts in the District of Columbia. D.C. Code § 13-425. *Founding Church of Scientology v. Verlag*, 536 F.2d 429, 1976 U.S. App. LEXIS 8799 (C.A.D.C. 1976).

Defense that want of jurisdiction cannot be waived is not strictly applicable to case wherein dismissal is sought on ground of forum non conveniens. *Wilburn v. Wilburn*, 192 A.2d 797, 1963 D.C. App. LEXIS 262 (App. 1963).

Discretion of court.

Trial judge has great, but not unlimited, discretion to apply doctrine of forum non conveniens; where there has been no weighing of relative advantages of each forum but only a consideration of the drawbacks of one, that discretion has been abused. *Founding Church of Scientology v. Verlag*, 536 F.2d 429, 1976 U.S. App. LEXIS 8799 (C.A.D.C. 1976).

Forum non conveniens determination is committed to the sound discretion of the trial court. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

Court of Appeals may exercise its discretion to hear appeal of trial court's denial of motion to

dismiss on grounds of forum non conveniens upon certification from Superior Court, pursuant to statutory procedures; certification procedure is intended to be exceptional and not merely a means of accelerated review for what may appear to be a difficult issue. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

Decision to grant or deny motion to dismiss complaint on ground of forum non conveniens is committed to sound discretion of trial court. D.C. Code 1981, § 13-425. *Beard v. South Main Bank*, 615 A.2d 203, 1992 D.C. App. LEXIS 216 (1992).

Decision to grant or deny motion to dismiss on grounds of forum non conveniens is committed to sound discretion of court and will not be overturned absent clear abuse of discretion. D.C. Code 1981, § 13-425. *Herskovitz v. Garmon*, 609 A.2d 1128, 1992 D.C. App. LEXIS 166 (1992).

Questions of forum non conveniens are generally committed to discretion of trial court. *Guevara v. Reed*, 598 A.2d 1157, 1991 D.C. App. LEXIS 300 (1991).

Upon determining that doctrine of forum non conveniens was applicable, trial court nonetheless had discretion to maintain plaintiff's pretrial attachment of property within jurisdiction pending of outcome of foreign litigation. *Barclays Bank, S.A. v. Tsakos*, 543 A.2d 802, 1988 D.C. App. LEXIS 90 (1988).

The decision to grant or deny a motion to dismiss on the ground of forum non conveniens is committed to sound discretion of trial court and will not be overturned absent a clear abuse of discretion. *Asch v. Taveres*, 467 A.2d 976, 1983 D.C. App. LEXIS 508 (1983).

Decision to dismiss for forum non conveniens is committed to sound discretion of trial court and will be reversed on appeal only upon clear showing of abuse of discretion. *Arthur v. Arthur*, 452 A.2d 160, 1982 D.C. App. LEXIS 466 (1982).

Decision whether to dismiss for forum non conveniens is committed to sound discretion of trial court, and Court of Appeals will reverse on appeal only upon clear showing of abuse of discretion. D.C. Code § 13-425. *Crown Oil & Wax Co. v. Safeco Ins. Co.*, 429 A.2d 1376, 1981 D.C. App. LEXIS 271 (1981).

Trial court did not abuse its discretion in refusing to dismiss for forum non conveniens claim against Delaware corporation of fraud and conspiracy in connection with allegedly forged signatures to indemnity agreement, where action began as suit against District of Columbia residents for breach of indemnity agreement, corporation was added after discovery of allegations of forgery, corporation had notice of action against residents from outset, distance from corporation's principal place of business in Maryland was not unduly burden-

some, there was no allegation that forum was chosen to vex or harass corporation, and court was familiar with Maryland law which would control some issues in case. D.C. Code § 13-425. *Crown Oil & Wax Co. v. Safeco Ins. Co.*, 429 A.2d 1376, 1981 D.C. App. LEXIS 271 (1981).

Trial court, in ruling on motion to dismiss for forum non conveniens, has considerable discretion and its ruling will not be disturbed absent abuse of that discretion. *Deupree v. Le*, 402 A.2d 428, 1979 D.C. App. LEXIS 374 (1979).

Decisions on questions of forum non conveniens are committed to sound discretion of trial court. D.C. Code § 13-425. *Washington v. May Dep't Stores*, 388 A.2d 484, 1978 D.C. App. LEXIS 472 (1978).

Decisions on questions of forum non conveniens are committed to sound discretion of trial court and will be reversed on appeal only upon clear showing of abuse of discretion; however, this broad discretion is not unlimited. *Cohane v. Arpeja-California, Inc.*, 385 A.2d 153, 1978 D.C. App. LEXIS 448 (1978), writ of certiorari denied by 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651, 1978 U.S. LEXIS 3936 (1978).

Decisions on questions of forum non conveniens are committed to sound discretion of trial court and will be upset on appeal only upon a clear showing of abuse of discretion. *Carr v. Bio-Medical Applications of Washington, Inc.*, 366 A.2d 1089, 1976 D.C. App. LEXIS 420 (1976).

Trial court's broad discretion as to questions of forum non conveniens is not unlimited and reviewing court must examine trial court's action in light of well established criteria for applying such doctrine. *Carr v. Bio-Medical Applications of Washington, Inc.*, 366 A.2d 1089, 1976 D.C. App. LEXIS 420 (1976).

In considering forum non conveniens motion, it is function of trial court to weigh the many factors which may be relevant to such motion to determine if movant's burden has been met, and court's decision will be disturbed only for clear abuse of discretion. *Consumer Federation of America v. Upjohn Co.*, 346 A.2d 725, 1975 D.C. App. LEXIS 256 (1975).

Decision of trial court on claim of forum non conveniens will be disturbed only for clear abuse of discretion. *Dorati v. Dorati*, 342 A.2d 18, 1975 D.C. App. LEXIS 419 (1975).

A decision to dismiss on a forum non conveniens motion is entrusted to discretion of trial court and such a dismissal will not be reversed on appeal except for a clear abuse of discretion. D.C. Code § 13-425. *District-Realty Title Ins. Corp. v. Goodrich*, 328 A.2d 93, 1974 D.C. App. LEXIS 311 (1974).

The doctrine of forum non conveniens is entrusted to discretion of trial judge. *Gagnon v. Wright*, 200 A.2d 196, 1964 D.C. App. LEXIS 226 (App. 1964).

Motion for dismissal on ground of forum non conveniens is addressed to discretion of court. *Wilburn v. Wilburn*, 192 A.2d 797, 1963 D.C. App. LEXIS 262 (App. 1963).

The decision whether to grant a dismissal for forum non conveniens is committed to the sound discretion of the trial court. *Allied Arab Bank Ltd. v. Hajjar*, 115 WLR 1717 (Super. Ct. 1987).

Grounds considered.

— Connections with District, grounds considered.

Where residents of Maryland filed in District Court of the District of Columbia a complaint for damages for injuries sustained in an automobile accident in the District of Columbia, and defendants were residents of Maryland and witnesses were in the District, police who investigated the accident were members of the District Police Department and witnesses were in the District, dismissing the complaint on the ground of forum non conveniens was improper. *Caspar v. Devine*, 257 F.2d 197, 1958 U.S. App. LEXIS 4471 (C.A.D.C. 1958).

Under District of Columbia choice of law rules, District of Columbia law applied to negligent misrepresentation claim asserted by insurer against insurance broker that prepared insured's application for commercial general liability (CGL) policy, given that insured's headquarters were located in District of Columbia and underlying third-party action against insured was brought in District of Columbia. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 398 F.Supp.2d 147, 2005 U.S. Dist. LEXIS 25162 (2005).

In determining which jurisdiction's law controls on particular issue, courts of District of Columbia employ modified governmental interest analysis, under which court must evaluate governmental policies underlying applicable laws and determine which jurisdiction's policy would be most advanced by having its law applied to facts of case. *Minebea Co. v. Papst*, 377 F.Supp.2d 34, 2005 U.S. Dist. LEXIS 12709 (2005).

Under Title VII's special venue provision, venue of employment discrimination action was properly in Eastern District of Virginia, and not District of Columbia; all of the alleged adverse employment acts occurred in Virginia, if not for alleged unlawful termination plaintiff would still be employed in Virginia, both plaintiff's residence and defendants' place of business were in Virginia, and all of plaintiff's employment records were kept in Virginia. *El v. Belden*, 360 F.Supp.2d 90, 2004 U.S. Dist. LEXIS 27114 (2004).

Venue for an employment discrimination action cannot lie in the District of Columbia when a substantial part, if not all, of the challenged

employment actions occurred outside the District. *El v. Belden*, 360 F.Supp.2d 90, 2004 U.S. Dist. LEXIS 27114 (2004).

Under District of Columbia law, of the greatest importance for the choice of law inquiry in a contract action is the place where the parties were to perform their respective obligations under the agreement. *Samra v. Shaheen Bus. & Inv. Group, Inc.*, 355 F.Supp.2d 483, 2005 U.S. Dist. LEXIS 1272 (2005).

Under District of Columbia choice of law rules, Florida law governed former employee's action against former employer to enforce purported settlement agreement arising from alleged employment contract, inasmuch as Florida, which was former employee's state of residence, as well as location of formation of alleged settlement agreement and location of principal performance, had more substantial interest in resolution of dispute than Delaware, where former employer was incorporated, District of Columbia, where employment contract was allegedly formed, Kingdom of Jordan, where former employer's owner resided, or England, where purported settlement agreement was preliminarily negotiated. *Samra v. Shaheen Bus. & Inv. Group, Inc.*, 355 F.Supp.2d 483, 2005 U.S. Dist. LEXIS 1272 (2005).

Under District of Columbia law, in contract cases the contacts to be taken into account to determine the law applicable to an issue include: (1) the place of contracting; (2) the place of negotiation of the contract; (3) the place of performance; (4) the location of the subject-matter of the contract; and (5) the domicile, residence, nationality, place of incorporation and place of business of the parties. *Samra v. Shaheen Bus. & Inv. Group, Inc.*, 355 F.Supp.2d 483, 2005 U.S. Dist. LEXIS 1272 (2005).

District of Columbia federal court was not available forum for habeas corpus petition of Naval Reserve officer who sought to restrain his deployment to Afghanistan; District of Columbia was not officer's domicile, had no proper custodian within its reach against whom district court's writ could run, and it generated no deployment orders to officer. *Blackmon v. England*, 323 F.Supp.2d 1, 2004 U.S. Dist. LEXIS 12657 (2004).

District of Columbia law, rather than Virginia law, applied to defendants' request to reduce the ad damnum clause in complaint in medical malpractice action; although plaintiff was a Virginia resident, defendants conducted business in the District of Columbia, litigation arose from health care treatment provided pursuant to a plan obtained through plaintiff's District of Columbia employer, and application of Virginia's \$1,000,000 cap on medical malpractice claims would contravene the District of Columbia's interest in protecting its workers and promoting corporate accountability. *Bucci v. Kaiser Permanente Found. Health Plan of*

the Mid-Atlantic States, Inc., 278 F.Supp.2d 34, 2003 U.S. Dist. LEXIS 14560 (2003).

Under District of Columbia's choice-of-law rules, New York law governed determination of prejudgment interest rate to which bondholder was entitled in his action for unpaid principal and interest against issuer of bonds, given that bonds were issued in New York and were to be presented there for payment from sinking fund created and maintained in New York, that bonds were redeemable on publication of notice within New York, and that New York bank was appointed as fiscal agent for payment of principal and interest on bonds, as well as sinking fund agent for bonds. *Turkmani v. Republic of Bol.*, 273 F.Supp.2d 45, 2002 U.S. Dist. LEXIS 26810 (2002), appeal denied by 2004 U.S. App. LEXIS 27405 (D.C. Cir. Dec. 29, 2004).

Under District of Columbia choice-of-law rules, law of District of Columbia would apply to defendants' contention that plaintiffs' remaining claims against them, which arose from partnership agreement, were barred by collateral estoppel, if collateral estoppel were characterized as substantive law; although partnership was incorporated in Minnesota and property in which partnership was invested was located in Minnesota, a substantial portion of events giving rise to claim occurred in District of Columbia, as well as solicitation, formation of partnership, and pre-purchase activity. *Bryson v. Gere*, 268 F.Supp.2d 46, 2003 U.S. Dist. LEXIS 11012 (2003).

District of Columbia had most substantial relationship to California client's malpractice claim against Pennsylvania counsel, for purpose of determining choice of law; representation was for purpose of litigating actions in District, and acts of alleged malpractice occurred there. *Jacobsen v. Oliver*, 201 F.Supp.2d 93, 2002 U.S. Dist. LEXIS 7938 (2002).

Where resident plaintiff alleged that automobile dealer's refusal to accept return of vehicle pursuant to representations made by salesman caused injury to plaintiff's credit rating and mental and physical well-being, District of Columbia was not a forum non conveniens to defendant automobile dealer which conducted sales activity within district and was located in nearby suburb. D.C. Code §§ 13-423(a)(4), 13-425. *Aiken v. Lustine Chevrolet, Inc.*, 392 F. Supp. 883, 1975 U.S. Dist. LEXIS 13158 (1975).

Choice of law doctrine would require application of Maryland law to determine liability coverage under bingo parlor's automobile policy for death of passenger in van on way home from gaming; the insured and insurer were Maryland corporations, the policy was prepared and delivered in Maryland, and the suit was not a personal injury action based on the accident occurring in the District of Columbia. *Holmes v. Brethren Mut. Ins. Co.*, 868 A.2d 155, 2005 D.C. App. LEXIS 33 (2005).

The law of the District of Columbia, rather than the law of Maryland, applied to determine ownership of joint bank accounts in Maryland that bore the name of decedent and brother of decedent, in probate action; the District of Columbia's interests were substantially stronger. In re Estate of Blake, 856 A.2d 1151, 2004 D.C. App. LEXIS 433 (2004).

A preliminary injunction against arbitration of dispute arising out of government contract was supported by irreparable harm to the District of Columbia in the form of the unnecessary and additional expense of arbitration, delay of the inevitable proceeding before the Contract Appeals Board (CAB), and the use of a closed conference room to resolve a dispute over a public contract. District of Columbia v. Greene, 806 A.2d 216, 2002 D.C. App. LEXIS 513 (2002).

In forum non conveniens analysis, when the plaintiff resides in another jurisdiction, court affords less deference to her choice of forum, particularly where the defendant also does not live in the District of Columbia. Blake v. Prof'l Travel Corp., 768 A.2d 568, 2001 D.C. App. LEXIS 53 (2001), writ of certiorari denied by 534 U.S. 1115, 122 S. Ct. 923, 151 L. Ed. 2d 887, 2002 U.S. LEXIS 543, 70 U.S.L.W. 3463 (2002).

In determining whether to dismiss on ground of forum non conveniens, the inquiry is not whether the District of Columbia is the best forum for the litigation, but rather whether the District has so little to do with the case that its courts should decline to hear it. Blake v. Prof'l Travel Corp., 768 A.2d 568, 2001 D.C. App. LEXIS 53 (2001), writ of certiorari denied by 534 U.S. 1115, 122 S. Ct. 923, 151 L. Ed. 2d 887, 2002 U.S. LEXIS 543, 70 U.S.L.W. 3463 (2002).

Dismissal of former employee's action against employer for sexual discrimination in violation of District of Columbia Human Rights Act (DCHRA) was not warranted on ground of forum non conveniens, even though decisions adverse to employee were made in Virginia and employer conducted much more business in Virginia than in District; employee's supervisor was a District resident, much of the alleged conduct occurred in District, and witnesses and evidence were at least as available in District as they were in Virginia. Blake v. Prof'l Travel Corp., 768 A.2d 568, 2001 D.C. App. LEXIS 53 (2001), writ of certiorari denied by 534 U.S. 1115, 122 S. Ct. 923, 151 L. Ed. 2d 887, 2002 U.S. LEXIS 543, 70 U.S.L.W. 3463 (2002).

There is local interest in having localized controversies decided at home, for purposes of motion to dismiss on grounds of forum non conveniens. Eric T. v. National Med. Enters., 700 A.2d 749, 1997 D.C. App. LEXIS 200 (1997).

Trial court acted within its discretion in refusing to dismiss for forum non conveniens an action for breach of fiduciary duty brought by

Maryland limited partnership against Virginia limited partnership related to real estate development located in Virginia; plaintiff's general partner lived and worked in District, and defendants had substantial contacts with District. D.C. Code 1981, § 13-425. Smith v. Alder Branch Realty Ltd. Pshp., 684 A.2d 1284, 1996 D.C. App. LEXIS 246 (1996).

In determining whether action between Virginia limited partnership and Maryland limited partnership should have been dismissed for forum non conveniens, trial court was entitled to give weight to fact that plaintiff's general partner lived and worked in District. D.C. Code 1981, § 13-425. Smith v. Alder Branch Realty Ltd. Pshp., 684 A.2d 1284, 1996 D.C. App. LEXIS 246 (1996).

Dismissal, on forum non conveniens grounds, of action for breach of partnership agreement, breach of fiduciary duty and for an accounting, brought by District of Columbia resident of Maryland against resident of Pennsylvania, was not an abuse of discretion; the partnership was organized under the laws of Pennsylvania and its operations took place only in that state; the fact that plaintiff's investment in partnership occurred in District was largely irrelevant to the suit as was plaintiff's employment in the District. D.C. Code 1981, § 13-425. Herskovitz v. Garmong, 609 A.2d 1128, 1992 D.C. App. LEXIS 166 (1992).

Forum non conveniens required dismissal of medical malpractice action brought in District of Columbia by Virginia resident where sole connection between District and events which precipitated lawsuit was that corporation that operated health maintenance organization (HMO) and medical professional corporation with which HMO operator contracted to provide physician services were incorporated in District, especially where effect of permitting plaintiff to litigate in District and to invoke District law would be to avoid limits which Virginia placed on recovery in Virginia medical malpractice actions; however, dismissal would be conditioned upon defendants' waiver of any defense based on Virginia statute of limitations, so long as plaintiff proceeded with reasonable expedition to institute such action in Virginia. D.C. Code 1981, § 13-425. Kaiser Foundation Health Plan, Inc. v. Rose, 583 A.2d 156, 1990 D.C. App. LEXIS 297 (1990).

Trial court did not abuse its discretion in denying former husband's motion to dismiss, on grounds of forum non conveniens, former wife's suit to recover child support arrearage, because former wife and the child for whom support was sought were District of Columbia residents, there was no indication that access to proof or availability of witnesses would be a problem or that former wife brought suit for the purpose of harassing or vexing former husband, and there did not appear to be any great difficulty in the

application of Maryland law to the separation agreement involved in the case. *Asch v. Taveres*, 467 A.2d 976, 1983 D.C. App. LEXIS 508 (1983).

When contacts with another jurisdiction are more substantial than with the District of Columbia, dismissal for *forum non conveniens* is not an abuse of discretion. D.C. Code § 13-425. *Mobley v. Southern R. Co.*, 418 A.2d 1044, 1980 D.C. App. LEXIS 346 (1980).

Superior court did not abuse its discretion in ordering case, involving an FELA claim, dismissed for *forum non conveniens*, despite fact that railroad's corporate offices were located in the District of Columbia, where plaintiff had no contact with the District or its metropolitan area, the situs of accident and treatment were well beyond the reach of the court, the civil docket of the court was already congested, and trial of case promised to be complex and drawn out before a jury in a jurisdiction with no relationship to the litigation. D.C. Code § 13-425. *Mobley v. Southern R. Co.*, 418 A.2d 1044, 1980 D.C. App. LEXIS 346 (1980).

It was not abuse of discretion to deny motion to dismiss for *forum non conveniens* where parties involved lived and worked in metropolitan Washington, discovery had started, and trial date had been set when motion was brought, even though both parties resided in Maryland and automobile collision action concerned occurred there. *Deupree v. Le*, 402 A.2d 428, 1979 D.C. App. LEXIS 374 (1979).

Plaintiff's status as a resident of the District of Columbia would not preclude dismissal of his suit on *forum non conveniens* grounds. D.C. Code § 13-425. *Washington v. May Dep't Stores*, 388 A.2d 484, 1978 D.C. App. LEXIS 472 (1978).

Where plaintiff in action seeking damages for false arrest, malicious prosecution, defamation, and negligence was a resident of the District of Columbia, where defendant, a New York corporation, operated department stores in Washington D.C. metropolitan area and thus had a significant presence in the District of Columbia jurisdiction, and where most of witnesses in case resided in the District of Columbia, suit was improperly dismissed on ground of *forum non conveniens*. D.C. Code § 13-425. *Washington v. May Dep't Stores*, 388 A.2d 484, 1978 D.C. App. LEXIS 472 (1978).

Doctrine of *forum non conveniens* is not rendered inapplicable because one of parties is District of Columbia resident. *Carr v. Bio-Medical Applications of Washington, Inc.*, 366 A.2d 1089, 1976 D.C. App. LEXIS 420 (1976).

Trial court did not abuse discretion in denying defendant Florida corporation's claim of *forum non conveniens* where plaintiff was corporate body of District of Columbia and where cause of action apparently rose in that jurisdiction, as contract upon which plaintiff was suing

was negotiated within as well as without District of Columbia, concerned money loaned from and to be repaid in District of Columbia, and was executed in District by plaintiff. *Florida Education Assoc. v. National Education Assoc.*, 354 A.2d 853, 1976 D.C. App. LEXIS 504 (1976).

When suit has contacts with another jurisdiction far more substantial than those of the forum and that jurisdiction is equally convenient to both parties, suit should be heard there. D.C. Code § 13-425. *Dorati v. Dorati*, 342 A.2d 18, 1975 D.C. App. LEXIS 419 (1975).

The Superior Court did not abuse its discretion in granting defendant's motion to dismiss on grounds of *forum non conveniens* where plaintiff's cause of action for alleged false arrest and wrongful detention arose in Maryland and defendant was plainly subject of service of process in Maryland. D.C. Code § 13-425. *Pitts v. Woodward & Lothrop*, 327 A.2d 816, 1974 D.C. App. LEXIS 303 (1974), writ of certiorari denied by 420 U.S. 911, 95 S. Ct. 832, 42 L. Ed. 2d 841, 1975 U.S. LEXIS 478 (1975).

Maryland resident's choice of forum in District of Columbia for action against railroad company for injuries sustained in train accident in Virginia was not so inappropriate or inconvenient as to justify its dismissal by the Court of General Sessions, where District of Columbia was the point at which trip had begun and was to end. *Byrd v. Southern R. Co.*, 203 A.2d 37, 1964 D.C. App. LEXIS 272 (App. 1964).

Dismissal on ground of *forum non conveniens* of suit for personal injuries occurring in store in Virginia, wherein patron and all defense witnesses resided, was not abuse of discretion. *Depenbrock v. Safeway Stores, Inc.*, 172 A.2d 561, 1961 D.C. App. LEXIS 254 (Cr.App. 1961).

In action by 29 Maryland residents for damages for fraud and misrepresentations concerning heating plants in plaintiffs' newly built homes in Maryland against builder-seller and against heating subcontractor, Delaware corporations doing business in Maryland, and against builder's selling agent, a Maryland corporation, wherein virtually all defense witnesses were Maryland residents not subject to subpoena in District of Columbia, trial court properly dismissed action on ground of *forum non conveniens*. *Walsh v. Crescent Hill Co.*, 134 A.2d 653, 1957 D.C. App. LEXIS 292 (Cr.App. 1957).

Where parties were residents of Maryland, the court granted respondent's motion to dismiss under this section. *L.T. v. J.C.*, 125 WLR 1309 (Super. Ct. 1997).

Court lacked personal jurisdiction where company was a Delaware corporation with its place of business in Montgomery County, Maryland; it had no facilities in the District of Columbia; it sold the product in Maryland; and

dealer, who signed the sales contract, gave a Michigan address. *DeLawder v. Keystone Ins. Co.*, 122 WLR 493 (Super. Ct. 1994).

Case was dismissed on forum non conveniens grounds where, in contrast to the extensive contacts with Virginia, the only link to the District of Columbia was that the corporate defendants were incorporated in the District. *Smith v. Kaiser Found. Health Plan of the Mid-Atlantic States, Inc.*, 118 WLR 2105 (Super. Ct. 1990).

— In general.

Where both allegedly defamed plaintiff and distributor of magazine were residents of the United States, where plaintiff sought damages for libelous publication in the District of Columbia, and where bringing of action in the District of Columbia was not prompted by an intent to vex or harass, it was error for trial court to decline jurisdiction on basis of forum non conveniens merely because the magazine in question had been written and published in West Germany. *Founding Church of Scientology v. Verlag*, 536 F.2d 429, 1976 U.S. App. LEXIS 8799 (C.A.D.C. 1976).

Former Swedish and American attorneys for Swedish scientist and corporation, of which he was managing director and sole shareholder, failed to show Sweden was available as an adequate forum for resolution of action brought by scientist and his corporation alleging claims arising from attorneys' improper representation of plaintiffs in copyright infringement actions, and thus dismissal of action on grounds of forum non conveniens was not appropriate; although Sweden offered well-developed legal system with many important procedural safeguards such as right to present evidence and call witnesses and right to appeal, defendants failed to demonstrate what causes of action or remedies would actually be available to plaintiffs in Sweden. *Lans v. Adduci Mastriani & Schaumberg L.L.P.*, 786 F.Supp.2d 240, 2011 U.S. Dist. LEXIS 54463 (2011).

Under District of Columbia choice of law rules, in determining applicable law with regard to tort claim, court must consider place where injury occurred, place where conduct causing injury occurred, residence, domicile, place of incorporation or place of business of parties, and place where parties' relationship, if any, is centered. *Minebea Co. v. Papst*, 377 F.Supp.2d 34, 2005 U.S. Dist. LEXIS 12709 (2005).

Breach of contract action by terminated employee would be transferred on former employer's motion, based on considerations of convenience and interest of justice, from District of Columbia to District of Maryland, where it could have originally been brought; although District of Columbia, where employee resided, was favored by employee, it lacked meaningful

ties to controversy, rather, Maryland was where decision to discharge employee was made and communicated to employee, and where relevant documents, material witnesses, and employer's corporate offices were located, transfer of case would promote judicial economy, in that it would likely involve interpretation of Maryland law, and would not delay case's resolution, and local interest favored Maryland, where employer had corporate offices and operative events occurred. *Schmidt v. Am. Inst. of Physics*, 322 F.Supp.2d 28, 2004 U.S. Dist. LEXIS 11691 (2004).

District of Columbia choice-of-law rules comprise a balancing test that weighs the competing interests of the subject jurisdictions to determine which jurisdiction should govern a particular substantive matter, and, in applying this balancing test, court considers various factors, such as the place of contracting, the place of contract negotiation, the place and performance of the contract, the location of the subject matter of the contract, the place of incorporation, and the parties' place of business. *Turkmani v. Republic of Bol.*, 273 F.Supp.2d 45, 2002 U.S. Dist. LEXIS 26810 (2002), appeal denied by 2004 U.S. App. LEXIS 27405 (D.C. Cir. Dec. 29, 2004).

District of Columbia's choice of law analysis incorporates four factors identified by Restatement of Conflicts of Laws: (1) where the injury occurred; (2) where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation and place of business of the parties; (4) where the relationship is centered. *Bryson v. Gere*, 268 F.Supp.2d 46, 2003 U.S. Dist. LEXIS 11012 (2003).

In resolving choice of law questions, District of Columbia employs governmental interests approach, which balances competing interests of jurisdictions by considering: (1) place of injury, (2) place where conduct occurred, (3) domicile of parties, and (4) place where relationship between parties is centered. *Jacobsen v. Oliver*, 201 F.Supp.2d 93, 2002 U.S. Dist. LEXIS 7938 (2002).

Forum non conveniens is not a ground for setting aside a default. *Digital Broad. Corp. v. Rosenman & Colin, LLP*, 847 A.2d 384, 2004 D.C. App. LEXIS 162 (2004).

A court may properly conclude that an initially appropriate forum has become inconvenient as a result of events that have occurred during the pendency of the litigation. *Sampson v. Johnson*, 846 A.2d 278, 2004 D.C. App. LEXIS 73 (2004).

Subcontractor's suit against general contractor to recover payment on contract to install audio-visual equipment at college in another state and perform training and maintenance could be dismissed based on forum non conveniens; even though the subcontractor was a District of Columbia resident and performed

more than two thirds of the work there, this factor was outweighed by the need to apply Maryland law and the quality of the work of running wires and installing the equipment in Maryland. *Future View, Inc. v. Criticom, Inc.*, 755 A.2d 431, 2000 D.C. App. LEXIS 144 (2000).

Fact that plaintiff is employed in District of Columbia carries very little weight in considering motion to dismiss on ground of forum non conveniens when place of employment is not related to alleged injury. *Ussery v. Kaiser Found. Health Plan*, 647 A.2d 778, 1994 D.C. App. LEXIS 164 (1994).

Fact that patient bringing medical malpractice action against health plan in District of Columbia was employed in District was not sufficient to defeat motion to dismiss action on ground of forum non conveniens where all alleged malpractice took place in Maryland, patient elected to receive and actually did receive her medical care through health plan in Maryland, and injuries were in no way related to patient's employment in District except for fact that patient enrolled in health plan through her employer. *Ussery v. Kaiser Found. Health Plan*, 647 A.2d 778, 1994 D.C. App. LEXIS 164 (1994).

Where plaintiff ignores a jurisdiction which has substantial contacts with his case and which is not inconvenient for him, his choice of forum elsewhere is outweighed by forum court's interest in clearing its calendar of foreign actions. D.C. Code § 13-425. *Dorati v. Dorati*, 342 A.2d 18, 1975 D.C. App. LEXIS 419 (1975).

Relevant in assessing forum non conveniens claim are interests of judicial administration, including removal from forum court's crowded docket of cases which bear no relationship to the locality and avoiding unnecessary interruption of the law of another jurisdiction. *Dorati v. Dorati*, 342 A.2d 18, 1975 D.C. App. LEXIS 419 (1975).

Corporate prison operator failed to establish that District of Columbia was seriously inconvenient forum for lawsuit brought against it by District inmate, who was allegedly assaulted and sexually harassed by correction officer while housed in Arizona prison; although litigation would be less inconvenient and expensive for prison operator if conducted in Arizona and court would have to apply Arizona law, inmate had been transferred to Colorado facility, and District's interests in ensuring its inmates were treated humanely and had fair opportunity to litigate their rights to be treated fairly while in custody outweighed any interest Arizona had in matter. *Morton v. Burns*, 130 WLR 1901 (Super. Ct. 2002).

Patient's respondeat superior claims against Maryland corporations that employed Maryland pharmacist, who allegedly gave patient wrong prescription, should have been dis-

missed for forum non conveniens, where none of the parties resided in District of Columbia, claim arose in Maryland, which was only jurisdiction that had meaningful relationship to litigation, and patient's forum selection appeared to have been result of strategy to avoid Maryland's statutory damage caps in favor of unlimited damages under District of Columbia law. *Morton v. Burns*, 130 WLR 1901 (Super. Ct. 2002).

Where Virginia law governed, Virginia was more closely "linked" to the subject dispute, and as plaintiffs were Virginia residents at all relevant times, a medical malpractice suit against a District hospital was dismissed on forum non conveniens grounds. *Bailey v. President & Dirs. of Georgetown College*, 121 WLR 861 (Super. Ct. 1992).

— Inconvenience to parties and witnesses, grounds considered.

Private interest factors weighed against dismissal, on grounds of forum non conveniens, of action brought by Swedish scientist and corporation, of which he was managing director and sole shareholder, against his former Swedish and American attorneys, alleging claims arising from attorneys' improper representation of plaintiffs in copyright infringement actions; District is location where Swedish attorneys deliberately reached to conduct business, prior member of court handled underlying litigation which formed factual basis for many of scientist's claims, physical location of relevant documents, whether in Sweden or District of Columbia, was less important in determining convenience of parties because many if not all of documents could presumably be made available electronically, availability of compulsory process for attendance of unwilling witnesses, and cost of obtaining the presence of willing witnesses was in equipoise between Sweden and United States, and litigation of all issues against all defendants in District would conserve most judicial resources and would possibly avoid duplicative litigation. *Lans v. Adduci Mastriani & Schaumberg L.L.P.*, 786 F.Supp.2d 240, 2011 U.S. Dist. LEXIS 54463 (2011).

In determining drug manufacturer's motion to transfer patient's negligence action from the District of Columbia to district court in North Carolina, the inconvenience to other patients of traveling for trial was the most critical factor to examine, following finding that patient's choice of forum in District of Columbia had no meaningful nexus to injuries he allegedly suffered in North Carolina; District of Columbia court was without authority to compel attendance of North Carolina patients, many of whom were essential to case, and patient's counsel could not guarantee that all of the patients would be willing to travel. *McClamrock v. Eli Lilly & Co.*,

267 F.Supp.2d 33, 2003 U.S. Dist. LEXIS 10136 (2003).

Limited partners' action against general partners for fraud and breach of contract would not be dismissed on ground of forum non conveniens, though general partners were Maryland residents and partnership was formed to buy Maryland real estate, where one of the limited partners was a District of Columbia resident, one of the general partners entered District to persuade limited partners to invest, and allegedly defrauded them there, and shift of forum would create significant inconvenience for limited partners and several of their witnesses. D.C. Code 1981, § 13-425. *Jenkins v. Smith*, 535 A.2d 1367, 1985 D.C. App. LEXIS 579 (1987).

Where Switzerland, alleged appropriate forum, had no contacts with subject of action to enforce support agreement executed between parties in California, other than defendant's domicile there, defendant was not amenable to service of process in California, defendant had substantial contacts with Washington, D.C. and it could reasonably be assumed that suit in Switzerland would face variety of obstacles not found in United States court, inconvenience of defendant did not outweigh plaintiff's interest in having her claim, governed by American law, considered and determined by American court and defendant was not entitled to have action brought in the District dismissed on ground of forum non conveniens. D.C. Code § 13-425. *Dorati v. Dorati*, 342 A.2d 18, 1975 D.C. App. LEXIS 419 (1975).

Determination that forum is inconvenient depends on variety of factors and not merely on residence of parties. *Stevens v. American Service Mut. Ins. Co.*, 234 A.2d 305, 1967 D.C. App. LEXIS 197 (App. 1967).

The time and expense of defendant traveling 40 miles during rush hour, taking 3 hours, was sufficient to support dismissal on grounds of forum non conveniens, where the defendant's only connection with the District was through the ownership of real property. District of Columbia ex rel. *Blackwell v. Jackson*, 119 WLR 609 (Super. Ct. 1991).

— Public or private interest, grounds considered.

In ruling on motion to dismiss for forum non conveniens, a trial court must consider both private interests of litigant and the public interest. *Forgotson v. Shea*, 491 A.2d 523, 1985 D.C. App. LEXIS 368 (1985).

Two separate interests must be considered in assessing a motion to dismiss for forum non conveniens: The private interest of the litigant, and the public interest. Factors relevant to the private interest concern the ease, expedition, and expense of the trial, and include the relative ease of access to proof, availability and cost

of compulsory process, the enforceability of a judgment once obtained, evidence of an attempt by the plaintiff to vex or harass the defendant by his choice of the forum, and other obstacles to a fair trial. Factors related to the public interest include administrative difficulties caused by local court dockets congested with foreign litigation, the imposition of jury duty on a community having no relationship to the litigation, and the inappropriateness of requiring local courts to interpret the laws of another jurisdiction. *Crown Oil & Wax Co. v. Safeco Ins. Co. of Am.*, App. D.C., 429 A.2d 1376 (1981); *Allied Arab Bank Ltd. v. Hajjar*, 115 WLR 1717 (Super. Ct. 1987).

Under District of Columbia choice-of-law rules, court must first determine if there is conflict between laws of relevant jurisdictions; only if such conflict exists must court then determine which jurisdiction has more substantial interest in resolution of issues. *YWCA v. Allstate Ins. Co.*, 275 F.3d 1145, 2002 U.S. App. LEXIS 612 (C.A.D.C. 2002).

Under District of Columbia law, where laws of two jurisdictions are involved, District of Columbia courts apply the law of the state with the more substantial interest in the matter. *Nationwide Mut. Ins. Co. v. Richardson*, 270 F.3d 948, 2001 U.S. App. LEXIS 23724 (C.A.D.C. 2001).

Federal district court sitting in diversity jurisdiction correctly determined that District of Columbia law governed interpretation of comprehensive general insurance policy purchased from Ohio insurer; the District of Columbia had the most substantial interest in the matter, since it was both the location where the underlying events occurred and the place of the insured's headquarters. *Nationwide Mut. Ins. Co. v. Richardson*, 270 F.3d 948, 2001 U.S. App. LEXIS 23724 (C.A.D.C. 2001).

Under District of Columbia's choice-of-law rule providing for constructive blending of governmental interests and most significant relationship test, court must evaluate governmental policies underlying the applicable laws and determine which jurisdiction's policy would be more advanced by the application of its law to the facts of the case, and, in so doing, court should also consider relevant factors enumerated in Restatement (Second) of Conflict of Laws, which help to identify the jurisdiction with the most significant relationship to the dispute, that presumptively being the jurisdiction whose policy would be more advanced by application of its law. *Essroc Cement Corp. v. CTI/D.C., Inc.*, 740 F.Supp.2d 131, 2010 U.S. Dist. LEXIS 101381 (2010).

Under District of Columbia choice of law rules, the jurisdiction with the most significant interest in insurance cases is either the place of the occurrence that requires coverage or the insured's headquarters. *Burlington Ins. Co. v.*

Okie Dokie, Inc., 398 F.Supp.2d 147, 2005 U.S. Dist. LEXIS 25162 (2005).

Choice of law rules in the District of Columbia require the court to evaluate the governmental policies underlying the applicable laws and determine which jurisdiction's policy would be more advanced by the application of its law. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 398 F.Supp.2d 147, 2005 U.S. Dist. LEXIS 25162 (2005).

Under the District of Columbia choice of law rules, the District of Columbia had a more substantial interest in the resolution of action brought by game show contestant against entertainment company concerning validity of contestant release form than did the state of Virginia, and, thus District of Columbia law would apply; the contract was negotiated, signed, and substantially performed in the District of Columbia, and, furthermore, the elements of contestant's tort claims, duty, tortious conduct, and damages which were directly implicated by the application of the prospective liability waiver, all arose in the District of Columbia. *Wright v. Sony Pictures Entm't, Inc.*, 394 F.Supp.2d 27, 2005 U.S. Dist. LEXIS 5194 (2005).

Under District of Columbia choice of law rules, the court must first determine whether there is a conflict in the potentially applicable legal standards of the two jurisdictions in question; then, if there is a conflict, the District of Columbia's choice of law rules will determine which jurisdiction has a more substantial interest in the resolution of the issues. *Wright v. Sony Pictures Entm't, Inc.*, 394 F.Supp.2d 27, 2005 U.S. Dist. LEXIS 5194 (2005).

District of Columbia (D.C.) law applied to civil conspiracy claim brought in shareholder derivative action alleging that chairman of company incorporated in Bermuda made illegal campaign contributions; D.C. had a more substantial interest in the application of its substantive law inasmuch as the majority of the illegal activities alleged went beyond internal corporate affairs and encompassed a broad spectrum of D.C.-based participants whose activities would have taken place almost exclusively in the D.C. area. *Meng v. Schwartz*, 305 F.Supp.2d 49, 2004 U.S. Dist. LEXIS 1554 (2004).

Pursuant to the choice of law rules of the District of Columbia, a court must first determine whether there is a conflict of laws between the relevant jurisdictions, and upon finding such a conflict, court should apply the law of the jurisdiction that has the more substantial interest. *Meng v. Schwartz*, 305 F.Supp.2d 49, 2004 U.S. Dist. LEXIS 1554 (2004).

If there is an alternative forum that has jurisdiction over defendant, court deciding motion to dismiss on *forum non conveniens* grounds should balance the private interests of

the litigants and the public interest, and the weight of either the private interest factors or the public interest factors alone may be cause for dismissal. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

Private interests of the litigants that district court had to consider before granting dismissal based on *forum non conveniens* included relative ease of access to sources of proof, availability of compulsory process for attendance of unwilling witnesses, cost of obtaining attendance of willing witnesses, possibility of view of premises, if appropriate to the action, and all other practical problems that would make trial of case easy, expeditious, and inexpensive. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

Public interest in equitable administration of the laws must be considered when court decides motion to dismiss for *forum non conveniens*. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

Public interest factors to be considered in deciding motion to dismiss on grounds of *forum non conveniens* attest to whether lawsuit is unnecessarily burdensome on the court or the residents of the community in which it is brought, and whether the community in which action leading to the lawsuit actually took place has an interest in the litigation. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

In tort cases, courts in the District of Columbia employ a governmental interests analysis to determine which jurisdiction's substantive law controls. *Jaffe v. Pallotta TeamWorks*, 276 F.Supp.2d 102, 2003 U.S. Dist. LEXIS 13881 (2003), reversed by, remanded by 374 F.3d 1223, 362 U.S. App. D.C. 398, 2004 U.S. App. LEXIS 14666 (2004).

In determining the applicable state law governing a particular substantive matter pursuant to District of Columbia's choice-of-law rules, the court applies the law of the jurisdiction with the more substantial interest in the resolution of the case. *Turkmani v. Republic of Bol.*, 273 F.Supp.2d 45, 2002 U.S. Dist. LEXIS 26810 (2002), appeal denied by 2004 U.S. App. LEXIS 27405 (D.C. Cir. Dec. 29, 2004).

District of Columbia courts use a "governmental interests" analysis in choice-of-law cases, which involves determining which jurisdiction's policy would be more advanced by the application of its law to the facts of the case under review. *Bryson v. Gere*, 268 F.Supp.2d 46, 2003 U.S. Dist. LEXIS 11012 (2003).

Under District of Columbia's choice of law rules, part of the test of determining the jurisdiction whose policy would be most advanced is determining which jurisdiction has the most significant relationship to the dispute. *Bryson v. Gere*, 268 F.Supp.2d 46, 2003 U.S. Dist. LEXIS 11012 (2003).

Private factors warranted transfer of patient's diversity action against drug manufacturer from the District of Columbia to North Carolina, even if patient's counsel and Federal Drug Administration (FDA) witnesses were located in District of Columbia; patient, a resident of North Carolina, allegedly suffered injuries after ingesting manufacturer's drug prescribed by physician in North Carolina, patient would need testimony of North Carolina physicians to prove damages, patient did not demonstrate how FDA witnesses would be important to strict liability and negligence claims, and patient did not establish that witnesses refused to testify or that their testimony could not be secured by other means. *McClamrock v. Eli Lilly & Co.*, 267 F.Supp.2d 33, 2003 U.S. Dist. LEXIS 10136 (2003).

Consideration of public interest factors supported conclusion that transfer of venue of patient's negligence action against drug manufacturer from District of Columbia to North Carolina district court was warranted; North Carolina law would most likely control claim of patient, who was a North Carolina resident who allegedly was injured after ingesting drug prescribed to him in North Carolina, District of Columbia court had minimal interest in deciding the controversy, and there was no allegation that transfer would result in unnecessary delay. *McClamrock v. Eli Lilly & Co.*, 267 F.Supp.2d 33, 2003 U.S. Dist. LEXIS 10136 (2003).

To prevail on motion to dismiss on forum non conveniens grounds, defendant must show that alternative forum exists and that balance of public and private interests favors dismissal. *Atl. Tele-Network, Inc. v. Inter-American Dev. Bank*, 251 F.Supp.2d 126, 2003 U.S. Dist. LEXIS 3800 (2003).

Private interest factors to consider in determining whether to dismiss suit on forum non conveniens grounds include: ease of access to proof, compulsory process to obtain attendance of hostile witnesses, cost of transporting friendly witnesses, and other problems that represent impediments to expeditious and inexpensive trial. *Atl. Tele-Network, Inc. v. Inter-American Dev. Bank*, 251 F.Supp.2d 126, 2003 U.S. Dist. LEXIS 3800 (2003).

Public interest factors to consider in determining whether to dismiss suit on forum non conveniens grounds are: desirability of clearing foreign controversies from congested dockets, extent of any local interest in resolving controversy, and ease with which present forum will

be able to apply laws of unfamiliar jurisdiction. *Atl. Tele-Network, Inc. v. Inter-American Dev. Bank*, 251 F.Supp.2d 126, 2003 U.S. Dist. LEXIS 3800 (2003).

Under District of Columbia Circuit's conflict of law principles, law of jurisdiction with stronger interest in application of its own law will apply; if interests of two jurisdictions in application of their law are equally weighty, law of forum will be applied. *Jacobsen v. Oliver*, 201 F.Supp.2d 93, 2002 U.S. Dist. LEXIS 7938 (2002).

District of Columbia's choice-of-law principles utilize governmental interests analysis, under which court evaluates governmental policies underlying applicable laws and determines which jurisdiction's policy would be more advanced by application of its law to facts of case under review. *Shenandoah Assocs. L.P. v. Tirana*, 182 F.Supp.2d 14, 2001 U.S. Dist. LEXIS 23453 (2001).

As part of governmental interests choice-of-law analysis under District of Columbia law, court may look to factors contained in Restatement (Second) of Conflicts of Laws, including: (1) place where injury occurred, (2) place where conduct causing injury occurred, (3) domicile, residence, nationality, place of incorporation, and place of business of parties, and (4) place where relationship is centered. *Shenandoah Assocs. L.P. v. Tirana*, 182 F.Supp.2d 14, 2001 U.S. Dist. LEXIS 23453 (2001).

Under District of Columbia's choice-of-law principles, Virginia law applied in action by limited partnerships against attorney for management company that collected rents for partnerships' apartment buildings, alleging tortious interference with contract, since Virginia had more significant interest in seeing its substantive law applied; all three partnerships, as well as their physical assets, were located in Virginia, and contracts between partnerships and management company were written and executed pursuant to Virginia law. *Shenandoah Assocs. L.P. v. Tirana*, 182 F.Supp.2d 14, 2001 U.S. Dist. LEXIS 23453 (2001).

Under District of Columbia choice-of-law rules, a court must first determine whether there is a conflict between the laws of the relevant jurisdictions; if a conflict exists, under the governmental interest analysis, court must apply the law of the jurisdiction which has a more substantial interest in the case. *Century Int'l Arms, LTD. v. Fed. State Unitary Enter. State Corp. Rosvoorouzhnie*, 172 F.Supp.2d 79, 2001 U.S. Dist. LEXIS 17251 (2001).

Even if issue was how an existing contract should be interpreted, rather than whether contract existed between Russian exporter and Canadian and American distributors, under District of Columbia choice-of-law rules, court would apply Russian law to the dispute since exporter was an agency or instrumentality of

the Russian government, subject matter of the alleged contract was Russian arms, and Russia had an extremely strong interest in ensuring that its state-controlled agencies are not subjected to laws that may contravene its own, so as not to interfere with the Russian government's ability to continue to transact business with North American companies. *Century Int'l Arms, LTD. v. Fed. State Unitary Enter. State Corp. Rosvoorouzhnie*, 172 F.Supp.2d 79, 2001 U.S. Dist. LEXIS 17251 (2001).

Public interest factors supported maintenance of action seeking, *inter alia*, declaration that funds deposited in bank belonged solely to decedent's estate in District of Columbia, rather than South Carolina; although legatee under decedent's will who withdrew funds and personal representative of decedent's estate resided in South Carolina and funds sought were being held in South Carolina, decedent was domiciled in District of Columbia at time of her death and funds were on deposit in District of Columbia at that time, District of Columbia has significant interest in ensuring that assets of deceased residents are collected and distributed according to resident's will, question of who is entitled to proceeds from decedent's local bank account is matter of local concern, and nature of claims involved only application of local law. *Dennis v. Edwards*, 831 A.2d 1006, 2003 D.C. App. LEXIS 557 (2003).

In *forum non conveniens* analysis, public interest factors for consideration include: (1) administrative difficulties caused by local court dockets congested with foreign litigation; (2) local interest in having localized controversies decided at home; (3) unfairness of imposing burden of jury duty on citizens of forum having no relation to litigation; and (4) avoidance of unnecessary problems in conflict of laws in interpretation of laws of another jurisdiction. *Dennis v. Edwards*, 831 A.2d 1006, 2003 D.C. App. LEXIS 557 (2003).

In *forum non conveniens* analysis, private interest factors for consideration include: (1) relative ease of access to proof; (2) availability of compulsory process to secure attendance of unwilling witnesses and cost of securing attendance of willing witnesses; (3) other practical problems related to ease, expense, and expedition of trial; (4) any evidence that choice of forum was made to harass defendant; and (5) relative advantages or disadvantages to fair trial. *Dennis v. Edwards*, 831 A.2d 1006, 2003 D.C. App. LEXIS 557 (2003).

In determining which jurisdiction's law will apply to substantive issues, courts use government interest analysis which requires first court evaluation of governmental policies underlying applicable conflicting laws and then determination as to which jurisdiction's policy would be most advanced by having its law

applied to facts of case. *Dennis v. Edwards*, 831 A.2d 1006, 2003 D.C. App. LEXIS 557 (2003).

Private interest factors supported maintenance of action seeking, *inter alia*, declaration that funds deposited in bank belonged solely to decedent's estate in District of Columbia, rather than South Carolina; although legatee under decedent's will who withdrew funds resided in South Carolina, controversy involved determination of rights of decedent's estate in bank account held at time of death in District of Columbia where estate was being administered, most witnesses resided in District of Columbia, there was no evidence personal representative of estate who brought action selected this forum for harassment purposes, and any inconvenience to personal representative, who resided in South Carolina, was irrelevant as he sued in his representative capacity. *Dennis v. Edwards*, 831 A.2d 1006, 2003 D.C. App. LEXIS 557 (2003).

Private interest factors, relevant to a *forum non conveniens* analysis include: 1) the relative ease of access to sources of proof, 2) the availability of compulsory process for attendance of unwilling witnesses, 3) the cost of obtaining attendance of willing witnesses, 4) the possibility of viewing the premises, if view would be appropriate to the action, 5) all other practical problems concerning the ease, expedition and expense of the trial, 6) the enforceability of a judgment once obtained, 7) evidence that the plaintiff attempted to vex, harass or oppress the defendant by his choice of forum, and 8) the relative advantages and obstacles to fair trial. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

Public interest factors, for purposes of considering motion to dismiss for *forum non conveniens*, emphasize burden imposed on forum in relation to its interest in litigation, as well as the interest of other potential fora in addressing the dispute locally. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

Private interest factors, relevant to a *forum non conveniens* analysis include: 1) administrative difficulties caused by local court dockets congested with foreign litigation, 2) the local interest in having localized controversies decided at home, 3) the unfairness of imposing the burden of jury duty on the citizens of a forum having no relation to the litigation, and 4) the avoidance of unnecessary problems in conflict of laws and in the interpretation of the laws of another jurisdiction. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

Under a choice of law analysis, the court applies another state's law when (1) its interest in the litigation is substantial, and (2) application of District of Columbia law would frustrate the clearly articulated public policy of that state. *Herbert v. District of Columbia*, 808 A.2d 776, 2002 D.C. App. LEXIS 595 (2002).

Under the "governmental interests" analysis, used to determine applicable law in tort cases, when the policy of one state would be advanced by application of its law, and that of another state would not be advanced by application of its law, a false conflict appears and the law of the interested state prevails; a true conflict arises when both states have an interest in applying their own laws to the facts of the case, in which case the law of the forum will be applied unless the foreign state has a greater interest in the controversy. *Herbert v. District of Columbia*, 808 A.2d 776, 2002 D.C. App. LEXIS 595 (2002).

In applying the governmental interests analysis to determine applicable law in tort cases, the court considers four factors: (1) the place where the injury occurred; (2) the place where the conduct causing the injury occurred; (3) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (4) the place where the relationship is centered. *Herbert v. District of Columbia*, 808 A.2d 776, 2002 D.C. App. LEXIS 595 (2002).

Court considers two categories of factors in deciding whether to dismiss for forum non conveniens: the private interests of the litigants and the public interests of the forum; once those factors are weighed against each other, unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed. *Blake v. Prof'l Travel Corp.*, 768 A.2d 568, 2001 D.C. App. LEXIS 53 (2001), writ of certiorari denied by 534 U.S. 1115, 122 S. Ct. 923, 151 L. Ed. 2d 887, 2002 U.S. LEXIS 543, 70 U.S.L.W. 3463 (2002).

Non-resident plaintiff's choice of forum is comparatively minor factor in determining whether dismissal is warranted for forum non conveniens. *Eric T. v. National Med. Enters.*, 700 A.2d 749, 1997 D.C. App. LEXIS 200 (1997).

Trial court did not abuse its discretion in dismissing on grounds of forum non conveniens claims brought by non-resident former psychiatric patients and their parents against non-resident corporate entities which operated or controlled psychiatric hospitals and non-resident psychiatrists who treated patients alleging medical malpractice, fraud, civil conspiracy, and other torts; "private interest" factors favored choice of Maryland as superior forum and there was question as to whether plaintiffs had selected District of Columbia as forum in order to avoid Maryland's "tort reform" restrictions, and "public interest" factors, including Maryland's and Virginia's interest in protecting their health care providers from invalid claims and District's interest in avoiding overcrowded court calendars, also favored dismissal. *Eric T. v. National Med. Enters.*, 700 A.2d 749, 1997 D.C. App. LEXIS 200 (1997).

State in which medical malpractice allegedly occurred has interest in deciding validity of serious allegations against hospitals which do business in that jurisdiction and against physicians who are licensed to practice medicine there for purposes of motion to dismiss action on ground of forum non conveniens. *Eric T. v. National Med. Enters.*, 700 A.2d 749, 1997 D.C. App. LEXIS 200 (1997).

Whether or not plaintiff is resident, trial court discretion is to be guided by enumerated private interest factors affecting convenience of litigants and public interest factors affecting convenience of forum. D.C. Code 1981, § 13-425. *Herskovitz v. Garmong*, 609 A.2d 1128, 1992 D.C. App. LEXIS 166 (1992).

Determination of forum non conveniens is subject to independent evaluation by appellate court of certain private and public interests, and either private or public interest may be dispositive when parties and court have not already expended time and effort preparing for trial. D.C. Code 1981, § 13-425. *Sartori v. Society of American Military Engineers*, 499 A.2d 883, 1985 D.C. App. LEXIS 522 (1985).

One of the private interests that should be considered in determining whether motion to dismiss for forum non conveniens should be granted is enforceability of judgment once obtained. D.C. Code 1981, § 13-425; *Fed. Rules Civ. Proc. Rule 12(h)*, 18 U.S.C. *Creamer v. Creamer*, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

In assessing a challenge to plaintiff's choice of forum, trial court should consider plaintiff's private interest and the public interest; factors relevant to the private interest concern the ease, expedition and expense of the trial, the relevant ease of access to proof, availability and cost of compulsory process, enforceability of a judgment obtained, evidence of an attempt by plaintiff to vex or harass a defendant by his choice of the forum, and other obstacles to a fair trial; factors related to the public interest include administrative difficulties caused by local court dockets congested with foreign jurisdiction, imposition of jury duty on a community having no relationship to the litigation, and the inappropriateness of requiring local courts to interpret the laws of another jurisdiction. D.C. Code § 13-425. *Mobley v. Southern R. Co.*, 418 A.2d 1044, 1980 D.C. App. LEXIS 346 (1980).

Relevant to a determination of issue of forum non conveniens are the private interests of litigants and the public interest; factors to be considered include the relative ease of access to proof, availability of compulsory process, cost of obtaining witnesses, inconvenience of long distance travel, and enforceability of judgment, and community's interest in avoiding congestion of its courts by foreign litigation. *Haynes v. Carr*, 379 A.2d 1178, 1977 D.C. App. LEXIS 279 (1977).

While public interest is a factor to be considered in applying doctrine of *forum non conveniens*, force and effect of that factor is negated by application of the doctrine at close of trial. *Wilburn v. Wilburn*, 192 A.2d 797, 1963 D.C. App. LEXIS 262 (App. 1963).

The private interest factors that are to be analyzed by a trial judge in considering a motion to dismiss for *forum non conveniens* are: (1) the convenience of the parties and the witnesses; (2) the ease of access to the source of proof; (3) the availability and cost of compulsory process; (4) the enforceability of any judgment obtained; (5) the ease or difficulty in viewing premises relevant to the litigation; (6) the existence or absence of any attempt by plaintiff to vex or harass the defendant though the choice of forum; and (7) the existence or absence of evidence that plaintiff chose this forum to take advantage of favorable law. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

The public interest factors that are to be analyzed by a trial judge in considering a motion to dismiss for *forum non conveniens* are: (1) the court's interest in clearing foreign controversies from its own congested dockets; (2) the burden of jury duty on the citizens of a forum having no relation to the litigation; (3) the societal interest in having disputes adjudicated in the forums in which they are most closely linked; and (4) the court's interest in avoiding the burden of having to construe a foreign jurisdiction's law. *Robinson v. Kaiser*, 130 WLR 625 (Super. Ct. 2002).

In a motion to dismiss by defendant on *forum non conveniens* principles, where at the time the plaintiff filed the subject medical malpractice claim he was a resident of the State of Maryland, but at the time of the alleged negligent act or omission, he was a resident of the District of Columbia, the defendant's motion was granted, as the public interest factors weighed more heavily than the private interest factors. *Colclough v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, 121 WLR 189 (Super. Ct. 1992).

The trial court is afforded broad discretion in determining whether to dismiss a suit on *forum non conveniens* grounds once it evaluates the private and public interest factors traditionally associated with the doctrine. *Smith v. Kaiser Found. Health Plan of the Mid-Atlantic States, Inc.*, 118 WLR 2105 (Super. Ct. 1990).

In general.

In applying a doctrine of *forum non conveniens*, important considerations are the relative ease of access to sources of proof, availability of compulsory process for attendance of unwilling, and cost of obtaining attendance of willing witnesses, possibility of view of the premises, and all other practical problems that make trial of a case easy, expeditious and

inexpensive. *Caspar v. Devine*, 257 F.2d 197, 1958 U.S. App. LEXIS 4471 (C.A.D.C. 1958).

District court sitting in District of Columbia applies the District of Columbia's choice of law rules in determining which state's laws apply in action arising under court's diversity jurisdiction. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 398 F.Supp.2d 147, 2005 U.S. Dist. LEXIS 25162 (2005).

The "doctrine of *forum non conveniens*" permits a court to dismiss an action over which it has jurisdiction when there is an adequate alternative forum in which the case can be more conveniently heard. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

Doctrine of *forum non conveniens* presupposes that there are at least two jurisdictions in which defendant may be sued, and therefore threshold inquiry is whether there is an adequate alternative forum in which plaintiff may bring his claims. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

There is no set formula for determining when dismissal based on *forum non conveniens* is warranted because inquiry is highly fact-specific. *Ussery v. Kaiser Found. Health Plan*, 647 A.2d 778, 1994 D.C. App. LEXIS 164 (1994).

Husband was not entitled to grant of motion for *forum non conveniens* in action by wife seeking child support based upon his allegation that wife and children were domiciled in Minnesota and that, therefore, Minnesota was proper forum for wife's claims, as husband presented no reasons why family division was inconvenient or inappropriate forum. D.C. Code 1981, § 13-425; Fed.R.Civ.Proc. Rule 12(h), 18 U.S.C. Creamer v. Creamer, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

Trial court need not always respect plaintiff's choice of forum when faced with *forum non conveniens* motion. *Consumer Federation of America v. Upjohn Co.*, 346 A.2d 725, 1975 D.C. App. LEXIS 256 (1975).

Factors to be considered in assessing a *forum non conveniens* claim are those practical problems that can make trial of a case easy, expeditious and inexpensive or can make it the opposite, including relative ease of access to proof, availability of compulsory process, cost of obtaining attendance of witnesses, enforceability of judgment if one is obtained, evidence of attempt by plaintiff to vex or harass the defendant by his choice of forum and other obstacles to a fair trial. *Dorati v. Dorati*, 342 A.2d 18, 1975 D.C. App. LEXIS 419 (1975).

Fact that suit involved nonresident in claim not arising in District of Columbia was not alone sufficient to justify application of doctrine of *forum non conveniens*. D.C. Code § 13-425.

Dorati v. Dorati, 342 A.2d 18, 1975 D.C. App. LEXIS 419 (1975).

Standard for application of doctrine of forum non conveniens is whether forum chosen by plaintiff is so completely inappropriate that it is better to stop litigation in place where it is brought and let it start all over again somewhere else. D.C. Code § 13-425. *Dorati v. Dorati*, 342 A.2d 18, 1975 D.C. App. LEXIS 419 (1975).

It is function of trial court to balance factors relevant to claim of forum non conveniens. *Dorati v. Dorati*, 342 A.2d 18, 1975 D.C. App. LEXIS 419 (1975).

Foreign insurance company which entered into contractual arrangements to appear and conduct defense of cases in District of Columbia courts, where introduction of evidence and the testimony of witnesses are usually required, could not later claim that action arising directly out of one such trial, in which nothing but legal argument was called for, was being conducted in an inconvenient forum. *Stevens v. American Service Mut. Ins. Co.*, 234 A.2d 305, 1967 D.C. App. LEXIS 197 (App. 1967).

When doctrine of forum non conveniens is invoked courts should proceed cautiously and make sure that balance is strongly in favor of defendant before putting a plaintiff out of court and sending him elsewhere. *Byrd v. Southern R. Co.*, 203 A.2d 37, 1964 D.C. App. LEXIS 272 (App. 1964).

If doctrine of forum non conveniens applies to action brought in Court of General Sessions of the District of Columbia it can only dismiss the case because forum chosen by plaintiff is so completely inappropriate and inconvenient that it is better to stop the litigation in place where brought and let it start over again somewhere else. *Byrd v. Southern R. Co.*, 203 A.2d 37, 1964 D.C. App. LEXIS 272 (App. 1964).

In determining whether the doctrine of "forum non conveniens" should be applied, trial court should weigh competing considerations, such as access to sources of proof available, availability of the witnesses and cost of obtaining their attendance, and the judges should proceed cautiously and make sure that the balance is strongly in favor of a defendant before putting a plaintiff out of court and sending him elsewhere. *Lewis v. Federal Services Discount Corp. of Baltimore*, 170 A.2d 235, 1961 D.C. App. LEXIS 219 (Cr.App. 1961).

An order dismissing suit on the ground of "forum non conveniens" on the court's own motion in chambers was error where the judge failed to make sure that the balance was strong in favor of the defendant before putting plaintiff out of court and sending him elsewhere. *Lewis v. Federal Services Discount Corp. of Baltimore*, 170 A.2d 235, 1961 D.C. App. LEXIS 219 (Cr.App. 1961).

The doctrine of forum non conveniens is one of common law origin and involves the exercise of an inherent judicial power. *Walsh v. Crescent Hill Co.*, 134 A.2d 653, 1957 D.C. App. LEXIS 292 (Cr.App. 1957).

Jurisdiction.

Dismissal of medical malpractice action against health plan on ground of forum non conveniens was proper where courts in District of Columbia lacked jurisdiction over Maryland hospital where procedure was performed and over doctors who performed procedure, requiring separate civil actions against health plan in District and against hospital and doctors in Maryland would have been seriously inconvenient, and all likely defendants were amenable to suit only in Maryland courts. *Ussery v. Kaiser Found. Health Plan*, 647 A.2d 778, 1994 D.C. App. LEXIS 164 (1994).

Superior Court of the District of Columbia was not appropriate forum for personal injury action brought by District residents against Maryland driver and corporate owner of subsidiary which owned vehicle arising out of motor vehicle accident in New Jersey where Superior Court lacked jurisdiction over Maryland driver, an essential party who had not been served with process, corporation which had international headquarters in Maryland was only being sued on respondeat superior theory, and Maryland was an available forum. *Guevara v. Reed*, 598 A.2d 1157, 1991 D.C. App. LEXIS 300 (1991).

Although the doctrine of forum non conveniens is usually an issue of venue, it is jurisdictional in the District of Columbia courts. D.C. Code § 13-425. *Mobley v. Southern R. Co.*, 418 A.2d 1044, 1980 D.C. App. LEXIS 346 (1980).

When an issue of forum non conveniens or change of venue is timely raised in a civil action, it is not sufficient to defeat such a motion to show that the court in which the action has been filed clearly has jurisdiction over defendant. D.C. Code § 13-425. *Pitts v. Woodward & Lothrop*, 327 A.2d 816, 1974 D.C. App. LEXIS 303 (1974), writ of certiorari denied by 420 U.S. 911, 95 S. Ct. 832, 42 L. Ed. 2d 841, 1975 U.S. LEXIS 478 (1975).

Plaintiff's choice of forum.

Unless balance of factors is strongly in defendant's favor, plaintiff's choice of forum should rarely be disturbed on forum non conveniens grounds. D.C. Code 1981, § 13-425. *Neale v. Arshad*, 683 A.2d 160, 1996 D.C. App. LEXIS 216 (1996).

Unless balance is strongly in favor of defendant, plaintiff's choice of forum should rarely be disturbed. D.C. Code 1981, § 13-425. *Herskovitz v. Garmong*, 609 A.2d 1128, 1992 D.C. App. LEXIS 166 (1992).

While, under doctrine of *forum non conveniens*, plaintiff's choice of forum is usually given a strong presumption, this factor carries much less weight when plaintiff is also a stranger to the forum. *BPA Int'l, Inc. v. Sweden*, 281 F.Supp.2d 73, 2003 U.S. Dist. LEXIS 15920 (2003), dismissed by 2004 U.S. App. LEXIS 9935 (D.C. Cir. May 19, 2004).

A plaintiff's choice of forum is rarely to be disturbed, and where strictly private interests are concerned, a plaintiff's choice will not be upset unless the balance of convenience is strongly in favor of the defendant. D.C. Code § 13-425. *Aiken v. Lustine Chevrolet, Inc.*, 392 F. Supp. 883, 1975 U.S. Dist. LEXIS 13158 (1975).

Generally, unless balance of relevant factors is strongly in favor of defendant, plaintiff's choice of forum should rarely be disturbed. *Dennis v. Edwards*, 831 A.2d 1006, 2003 D.C. App. LEXIS 557 (2003).

Plaintiff's choice of forum deserves less deference when plaintiff is from another jurisdiction. D.C. Code 1981, § 13-425. *Herskovitz v. Garmong*, 609 A.2d 1128, 1992 D.C. App. LEXIS 166 (1992).

Plaintiff's choice of forum should rarely be disturbed unless the balance of equitable considerations is strongly in the defendant's favor. D.C. Code § 13-425. *Mobley v. Southern R. Co.*, 418 A.2d 1044, 1980 D.C. App. LEXIS 346 (1980).

Defendant bears significant burden when it attempts to dismiss for inconvenience plaintiff's choice of forum, to which trial court owes substantial deference when it considers such motion. *Deupree v. Le*, 402 A.2d 428, 1979 D.C. App. LEXIS 374 (1979).

Unless balance weighs heavily in favor of alternate forum suggested by defendant, plaintiff's choice will rarely be disturbed. *Florida Education Assoc. v. National Education Assoc.*, 354 A.2d 853, 1976 D.C. App. LEXIS 504 (1976).

Generally, defendant claiming benefit of doctrine of *forum non conveniens* bears burden of establishing that balance of equitable considerations is strongly in his favor, and, unless he does so, plaintiff's choice of forum will not be disturbed. *Dorati v. Dorati*, 342 A.2d 18, 1975 D.C. App. LEXIS 419 (1975).

Procedure, generally.

Under District of Columbia choice of law rules, where there is no specification by the parties of which jurisdiction's law will govern their agreement, a court is required to evaluate the nature of the various potentially governing jurisdictions' contacts with the subject matter of the controversy and determine, on the basis of that evaluation, which jurisdiction has the more substantial interest in the resolution of the issues. *Samra v. Shaheen Bus. & Inv.*

Group, Inc., 355 F.Supp.2d 483, 2005 U.S. Dist. LEXIS 1272 (2005).

Terminated employee's right to challenge the validity of a final judgment of a District of Columbia court was procedural in nature, and thus, the law of the forum applied instead of Maryland law, which was named in the choice of law provision in employee's contract. *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Sci., Inc.*, 858 A.2d 457, 2004 D.C. App. LEXIS 445 (2004).

Under customary choice of law principles, the laws of the forum apply to matters of procedure and, save where limitations is part of the cause of action itself, a limitation on the time of suit is procedural and is governed by the law of the forum. *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Sci., Inc.*, 858 A.2d 457, 2004 D.C. App. LEXIS 445 (2004).

In the absence of exceptional circumstances compelling the trial court to make rulings off the cuff in the press and urgency of a trial, the judge should make findings of fact and conclusions of law before dismissing an action on inconvenient forum grounds. *Sampson v. Johnson*, 846 A.2d 278, 2004 D.C. App. LEXIS 73 (2004).

Physicians' request, in the alternative, to dismiss action against them on grounds of *forum non conveniens* did not constitute a waiver of their primary contention that court lacked personal jurisdiction. *Eric T. v. National Med. Enters.*, 700 A.2d 749, 1997 D.C. App. LEXIS 200 (1997).

District of Columbia superior court did not abuse its discretion in denying former partner's motion to reconsider judgment dismissing former partner's action for an accounting against New York law firm based on *forum non conveniens*. *Forgotson v. Shea*, 491 A.2d 523, 1985 D.C. App. LEXIS 368 (1985).

Former husband's motion was for *forum non conveniens*, where former husband asked trial court to exercise its discretion to dismiss claim over which it had jurisdiction, in deference to court of another jurisdiction which allegedly was better suited to adjudicate the claim, thus husband had not waived opportunity to request that court defer to Minnesota tribunal on child support claims by waiting until morning of trial to raise objection. D.C. Code 1981, § 13-425; Fed.R.Civ.Proc. Rule 12(h), 18 U.S.C. *Creamer v. Creamer*, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

Trial court did not abuse its discretion in denying additional discovery with respect to motion to dismiss for *forum non conveniens*. D.C. Code § 13-425. *Mobley v. Southern R. Co.*, 418 A.2d 1044, 1980 D.C. App. LEXIS 346 (1980).

Motion to dismiss for *forum non conveniens* does not call for a detailed development of the entire case; rather, discovery is limited to loca-

tion of important sources of proof. *Mobley v. Southern R. Co.*, 418 A.2d 1044, 1980 D.C. App. LEXIS 346 (1980).

Purpose.

One of purposes of doctrine of forum non conveniens is to avoid forum shopping. *Eric T. v. National Med. Enters.*, 700 A.2d 749, 1997 D.C. App. LEXIS 200 (1997).

One of the purposes of the forum non conveniens doctrine is to prevent forum shopping. *Colclough v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, 121 WLR 189 (Super. Ct. 1992).

One of the purposes of the forum non conveniens doctrine is the avoidance of saddling courts with the burden of construing the law of a foreign jurisdiction. *Colclough v. Kaiser Found. Health Plan of Mid-Atlantic States, Inc.*, 121 WLR 189 (Super. Ct. 1992).

Remand.

Remand for statement of reasons for denying motion to dismiss complaint on ground of forum non conveniens was required since decision was not made under press and urgency of a trial, decision was dependent on number of discrete factors, and decision could have gone either way. D.C. Code 1981, § 13-425. *Beard v. South Main Bank*, 615 A.2d 203, 1992 D.C. App. LEXIS 216 (1992).

If personal injury case were remanded, motions court would have but one option and that would be to grant motion for dismissal on forum non conveniens grounds; hence, remand was unnecessary and order of dismissal would be affirmed even if decision was questionable. *Guevara v. Reed*, 598 A.2d 1157, 1991 D.C. App. LEXIS 300 (1991).

Basis for discretionary decision to deny motion to reconsider dismissal of complaint due to forum non conveniens could not be determined, and therefore, case had to be remanded for reconsideration so that appropriate record could be created. *Sartori v. Society of American Military Engineers*, 499 A.2d 883, 1985 D.C. App. LEXIS 522 (1985).

Review.

— Decisions reviewable.

Denials of forum non conveniens motions to dismiss are not immediately appealable as of right to Court of Appeals; overruling *Frost v. Peoples Drug Store*, 327 A.2d 810, *Jenkins v. Smith*, 499 A.2d 128 (per curiam), and *Jenkins v. Smith*, 535 A.2d 1367 (en banc). *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

Court of Appeals permits interlocutory appeals from orders denying motion to dismiss for forum non conveniens. D.C. Code 1981, § 13-425. *Smith v. Alder Branch Realty Ltd. Pshp.*,

684 A.2d 1284, 1996 D.C. App. LEXIS 246 (1996).

Order denying motion to dismiss on grounds of forum non conveniens is immediately appealable. D.C. Code 1981, § 13-425. *Beard v. South Main Bank*, 615 A.2d 203, 1992 D.C. App. LEXIS 216 (1992).

Denial of motion to dismiss based on doctrine of forum non conveniens is appealable order. D.C. Code §§ 11-721(a)(1), 13-425. *Crown Oil & Wax Co. v. Safeco Ins. Co.*, 429 A.2d 1376, 1981 D.C. App. LEXIS 271 (1981).

A denial of a motion to dismiss based upon a claim of forum non conveniens is a final and an appealable order. D.C. Code § 13-425. *District--Realty Title Ins. Corp. v. Goodrich*, 328 A.2d 93, 1974 D.C. App. LEXIS 311 (1974).

— In general.

While review by Court of Appeals of trial court's decision on motion to dismiss on ground of forum non conveniens is deferential, it includes, nevertheless, independent evaluation of private and public factors enumerated in *Gulf Oil. Dennis v. Edwards*, 831 A.2d 1006, 2003 D.C. App. LEXIS 557 (2003).

Pretrial certification for appellate review of trial court's denial of motion to dismiss on grounds of forum non conveniens is particularly appropriate, when a close question turns on the proper evaluation of the public interest factors. *Rolinski v. Lewis*, 828 A.2d 739, 2003 D.C. App. LEXIS 470 (2003).

The Court of Appeals reviews choice of law questions de novo. *Herbert v. District of Columbia*, 808 A.2d 776, 2002 D.C. App. LEXIS 595 (2002).

Although Court of Appeals reviews a decision to dismiss on grounds of forum non conveniens for abuse of discretion, trial court rulings in this area receive closer scrutiny than most other exercises of discretion, in that Court of Appeals conducts an independent analysis of the public and private interests involved in the case. *Blake v. Prof'l Travel Corp.*, 768 A.2d 568, 2001 D.C. App. LEXIS 53 (2001), writ of certiorari denied by 534 U.S. 1115, 122 S. Ct. 923, 151 L. Ed. 2d 887, 2002 U.S. LEXIS 543, 70 U.S.L.W. 3463 (2002).

In the end, when conducting forum non conveniens analysis, Court of Appeals asks whether the trial judge has reasonably evaluated the motion in light of the relevant factors. *Blake v. Prof'l Travel Corp.*, 768 A.2d 568, 2001 D.C. App. LEXIS 53 (2001), writ of certiorari denied by 534 U.S. 1115, 122 S. Ct. 923, 151 L. Ed. 2d 887, 2002 U.S. LEXIS 543, 70 U.S.L.W. 3463 (2002).

The deferential standard of review of a decision on a motion to dismiss for forum non conveniens is not a rubber-stamp; rather, the Court of Appeals applies close scrutiny to the specific factors identified and evaluated by the

trial court and, once it is satisfied that the trial court took the proper factors into account, adopts a deferential approach in determining whether the trial court's decision fell within the broad discretion committed to it. *Future View, Inc. v. Criticom, Inc.*, 755 A.2d 431, 2000 D.C. App. LEXIS 144 (2000).

Where trial court has considered all relevant public and private interest factors, and where its balancing of those factors is reasonable, its decision to grant or deny motion to dismiss on basis of forum non conveniens deserves substantial deference on appeal. *Eric T. v. National Med. Enters.*, 700 A.2d 749, 1997 D.C. App. LEXIS 200 (1997).

Court of Appeals' review of rulings on forum non conveniens motions includes independent evaluation of both private and public factors, and once appellate court is satisfied that trial court took proper factors into account, Court of Appeals adopts deferential approach in determining whether trial court's decision fell within broad discretion committed to it. *Eric T. v. National Med. Enters.*, 700 A.2d 749, 1997 D.C. App. LEXIS 200 (1997).

When Court of Appeals reviews trial court's exercise of discretion in deciding motions to dismiss for forum non conveniens, Court of Appeals first applies close scrutiny to specific factors identified and evaluated by trial court; once Court of Appeals is satisfied that trial court took proper factors into account, Court of Appeals adopts deferential approach in determining whether trial court's decision fell within the broad discretion committed to it. D.C. Code 1981, § 13-425. *Smith v. Alder Branch Realty Ltd. Pshp.*, 684 A.2d 1284, 1996 D.C. App. LEXIS 246 (1996).

Finding that trial court did not abuse its discretion in granting motion to dismiss for forum non conveniens does not necessarily mean that trial court would have abused its discretion had it denied same motion. D.C. Code 1981, § 13-425. *Smith v. Alder Branch Realty Ltd. Pshp.*, 684 A.2d 1284, 1996 D.C. App. LEXIS 246 (1996).

On review of questions of forum non conveniens, Court of Appeals makes independent evaluation of "private interest" factors (plaintiff's choice of forum, convenience of parties and witnesses, ease of access to sources of proof, availability and cost of compulsory process, and enforceability of any judgment obtained) and of "public interest" factors (clearance of foreign controversies from congested dockets, adjudication of disputes in forum most closely linked thereto, and avoidance of saddling courts with burden of construing foreign jurisdiction's law). D.C. Code 1981, § 13-425. *Neale v. Arshad*, 683 A.2d 160, 1996 D.C. App. LEXIS 216 (1996).

Decisions on questions of forum non conveniens are committed to sound discretion of trial court and will be upset on appeal only upon

clear showing of abuse of that discretion; this broad discretion is not unlimited, however, and Court of Appeals must examine trial court's action in light of well-established criteria for applying doctrine of forum non conveniens. D.C. Code 1981, § 13-425. *Neale v. Arshad*, 683 A.2d 160, 1996 D.C. App. LEXIS 216 (1996).

On appeal involving forum non conveniens issues, Court of Appeals reviews trial court's decision for abuse of discretion, but at same time conducts own independent analysis of public and private interests involved in case. *Ussery v. Kaiser Found. Health Plan*, 647 A.2d 778, 1994 D.C. App. LEXIS 164 (1994).

Trial court ruling on issue of forum non conveniens may be subject to reversal unless guided by independent evaluation of private and public factors enumerated in *Gulf Oil Corp. v. Gilbert*. *Guevara v. Reed*, 598 A.2d 1157, 1991 D.C. App. LEXIS 300 (1991).

Although Court of Appeals makes an independent evaluation of a trial court's ruling on a forum non conveniens motion, the Court nonetheless affords deference to the ruling, reversing it only on a clear showing that the trial court has abused its broad discretion. *Matthews v. Automated Business Systems & Services, Inc.*, 558 A.2d 1175, 1989 D.C. App. LEXIS 100 (1989).

Trial court's ruling on forum non conveniens motion is entitled to considerable deference by reviewing court and will not be reversed absent clear evidence that trial court abused its broad discretion. D.C. Code 1981, § 13-425. *Jenkins v. Smith*, 535 A.2d 1367, 1985 D.C. App. LEXIS 579 (1987).

Decision to dismiss a suit on basis of forum non conveniens is entrusted to the discretion of the trial court and will not be disturbed on appeal absent a showing of clear abuse of discretion. D.C. Code § 13-425. *Mobley v. Southern R. Co.*, 418 A.2d 1044, 1980 D.C. App. LEXIS 346 (1980).

District of Columbia Court of Appeals must review criteria considered by trial court in its ruling on motion to dismiss on claim of forum non conveniens. *Dorati v. Dorati*, 342 A.2d 18, 1975 D.C. App. LEXIS 419 (1975).

Sua sponte dismissal.

Trial courts have authority to sua sponte dismiss action on forum non conveniens grounds. D.C. Code 1981, § 13-425. *Neale v. Arshad*, 683 A.2d 160, 1996 D.C. App. LEXIS 216 (1996).

Sua sponte dismissal of automobile accident case on forum non conveniens grounds was error, even though neither plaintiff nor defendant was resident of District of Columbia (D.C.), as accident took place in District, whose substantive law would thus apply, defendant could point to no obstacles as potentially impeding his defense in District, and record did

not contain information about residence of any potential witness. D.C. Code 1981, § 13-425. *Neale v. Arshad*, 683 A.2d 160, 1996 D.C. App. LEXIS 216 (1996).

A ruling of forum non conveniens may be made by trial court sua sponte. *Haynes v. Carr*, 379 A.2d 1178, 1977 D.C. App. LEXIS 279 (1977).

Trial court did not abuse its discretion in dismissing, sua sponte, divorced mother's motion to increase child support payments on ground of forum non conveniens, in view of fact that both parties were residents of Maryland, children resided in Maryland and attended school in Maryland and Virginia, only significant contact of either party with District of Columbia was that divorced father was employed there, and there was no showing of unusual circumstances that would justify entertaining action in District of Columbia. *Haynes v. Carr*, 379 A.2d 1178, 1977 D.C. App. LEXIS 279 (1977).

Jurisdiction should be taken of litigation unless to do so would work injustice, for purpose of determining motion to dismiss on ground of forum non conveniens. *Wilburn v. Wilburn*, 192 A.2d 797, 1963 D.C. App. LEXIS 262 (App. 1963).

Objection that action has been instituted in forum non conveniens may be made by court sua sponte at any time. *Wilburn v. Wilburn*, 192 A.2d 797, 1963 D.C. App. LEXIS 262 (App. 1963).

Sua sponte dismissal of action on ground of forum non conveniens after months of preparation, motions, pre-trial, and full hearing consuming two days was abuse of discretion. *Wilburn v. Wilburn*, 192 A.2d 797, 1963 D.C. App. LEXIS 262 (App. 1963).

Timing of motion.

Court will not be prompted to exercise its discretion in favor of a defendant who raises objection of forum non conveniens for first time after defendant has answered, taken depositions, proceeded to pretrial and caused plaintiff to incur expense in preparing for trial. D.C.

Code 1981, § 13-425; Fed.R.Civ.Proc. Rule 12(h), 18 U.S.C. *Creamer v. Creamer*, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

Forum non conveniens objection may be made at any time. D.C. Code 1981, § 13-425. *Creamer v. Creamer*, 482 A.2d 346, 1984 D.C. App. LEXIS 476 (1984).

Where wife filed her motion to dismiss divorce action on grounds of forum non conveniens on day of trial following court's denial three days earlier of her motion for continuance, and trial court found that motion to dismiss for forum non conveniens was filed solely for purpose of delaying trial, trial court did not abuse its discretion in denying wife's motion to dismiss for forum non conveniens. *Arthur v. Arthur*, 452 A.2d 160, 1982 D.C. App. LEXIS 466 (1982).

Where salesman, a Delaware resident, brought action for commissions against his employer, a California corporation, where pretrial motion to dismiss on forum non conveniens grounds was denied, where, for months, parties made preparations for trial and engaged in pretrial proceedings, where witnesses were in courtroom prepared to proceed, where access to proof or availability of compulsory process was not problem, and where there was no problem in enforcing any judgment nor was there any indication that suit was brought in District of Columbia in order to harass employer, trial court erred in dismissing case in midtrial on grounds of forum non conveniens. *Cohane v. Arpeja-California, Inc.*, 385 A.2d 153, 1978 D.C. App. LEXIS 448 (1978), writ of certiorari denied by 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651, 1978 U.S. LEXIS 3936 (1978).

Where parties have expended their time, effort and money preparing for trial, these factors must be considered in determining whether to dismiss complaint on ground of forum non conveniens; significance must be given to timing of forum non conveniens motion. *Cohane v. Arpeja-California, Inc.*, 385 A.2d 153, 1978 D.C. App. LEXIS 448 (1978), writ of certiorari denied by 439 U.S. 980, 99 S. Ct. 567, 58 L. Ed. 2d 651, 1978 U.S. LEXIS 3936 (1978).

Subchapter III. Service Outside the District of Columbia.

§ 13-431. Manner and proof of service.

(a) When the law of the District of Columbia authorizes service outside the District of Columbia, the service, when reasonably calculated to give actual notice, may be made —

(1) by personal delivery in the manner prescribed for service within the District of Columbia;

(2) in the manner prescribed by the law of the place in which the service

is made for service in that place in an action in any of its courts of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requiring a signed receipt; or

(4) as directed by the foreign authority in response to a letter rogatory.

(b) Proof of service outside the District of Columbia may be made by affidavit of the individual who made the service or in the manner prescribed by the law of the District of Columbia, the order pursuant to which the service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee or other evidence of personal delivery to the addressee satisfactory to the court.

(July 29, 1970, 84 Stat. 549, Pub. L. 91-358, title I, § 132(a).)

Prior Codifications. — 1981 Ed., § 13-431. 1973 Ed., § 13-431.

CASE NOTES

ANALYSIS

Due process.
In general.

Due process.

In order for a court properly to assert personal jurisdiction over a nonresident defendant, service of process on the nonresident must be both authorized by statute and within limits set by due process clause of the United States Constitution. U.S. Const. Amend. 5. *Lott v. Burning Tree Club, Inc.*, 516 F. Supp. 913, 1980 U.S. Dist. LEXIS 16849 (1980).

In general.

Strict construction of the statute permitting service outside the District of Columbia in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction demanded adequate proof that plaintiff obtained an order from a court in the

Bahamas, as required by Bahamian law, authorizing service by publication. *Fox v. Ginsburg, Feldman & Bress*, 785 A.2d 660, 2001 D.C. App. LEXIS 239 (2001).

Representation by plaintiff's attorney that retained counsel in the Bahamas secured order permitting service by publication was insufficient proof of service in compliance with Bahamian law; certified copy of the order was required. *Fox v. Ginsburg, Feldman & Bress*, 785 A.2d 660, 2001 D.C. App. LEXIS 239 (2001).

Landlord that knew tenant's Colorado address and telephone number could not serve tenant by posting summons for eviction action on premises and could have served tenant by mail requiring signed receipt; landlord was unable to locate anyone residing on premises. D.C. Code 1981, §§ 13-401, 13-402, 13-423(a)(5), 13-424, 13-431(a)(3), 45-1406; *Landlord and Tenant Rule 4. Frank Emmet Real Estate, Inc. v. Monroe*, 562 A.2d 134, 1989 D.C. App. LEXIS 145 (1989).

§ 13-432. Individuals eligible to make service.

Service outside the District of Columbia may be made by an individual who is permitted to make service of process under the law of the District of Columbia or under the law of the place in which the service is made or who is designated by a District of Columbia court.

(July 29, 1970, 84 Stat. 550, Pub. L. 91-358, title I, § 132(a).)

Prior Codifications. — 1981 Ed., § 13-432. 1973 Ed., § 13-432.

§ 13-433. Individuals to be served; special cases.

When the law of the District of Columbia requires that in order to effect service one or more designated individuals be served, service outside the District of Columbia under this article must be made upon such designated individual or individuals.

(July 29, 1970, 84 Stat. 550, Pub. L. 91-358, title I, § 132(a).)

Prior Codifications. — 1981 Ed., § 13-433. 1973 Ed., § 13-433.

§ 13-434. Assistance to tribunals and litigants outside the District of Columbia.

(a) A District of Columbia court may order service upon any person who is domiciled or can be found within the District of Columbia of any document issued in connection with a proceeding in a tribunal outside the District of Columbia. The order may be made upon application of any interested person or in response to a letter rogatory issued by a tribunal outside the District of Columbia and shall direct the manner of service.

(b) Service in connection with a proceeding in a tribunal outside the District of Columbia may be made within the District of Columbia without an order of court.

(c) Service under this section does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside the District of Columbia.

(July 29, 1970, 84 Stat. 550, Pub. L. 91-358, title I, § 132(a).)

Prior Codifications. — 1981 Ed., § 13-434. 1973 Ed., § 13-434.

CASE NOTES**Documents issued.**

Any contacts that hospital had with District of Columbia residents through newspaper announcements were random and tenuous, for purposes of establishing personal jurisdiction in medical malpractice action under the long-arm statute, where announcements ran only in southern Maryland section of newspaper, which was distributed in Maryland, listed a local Maryland telephone number, and suggested that hospital was seeking volunteers from southern Maryland. *Peluzzo v. Leiboff*, 133 WLR 111 (Super. Ct. 2005).

Hospital's listing in local physician's directory was not advertising with an eye toward securing business from District of Columbia (DC) residents, for purposes of establishing personal jurisdiction in medical malpractice action under the long-arm statute, where there was no showing that hospital paid to be listed in directory or derived substantial economic benefits from DC residents by being listed.

Peluzzo v. Leiboff, 133 WLR 111 (Super. Ct. 2005).

Any contacts that hospital had with District of Columbia residents through either hospital's passive website or website of hospital's foundation, which could be accessed virtually anywhere in the world through the Internet, were random, tenuous, and insufficient to establish jurisdiction over hospital in medical malpractice action pursuant to long-arm statute. *Peluzzo v. Leiboff*, 133 WLR 111 (Super. Ct. 2005).

Physician's contacts, if any, with District of Columbia (DC) were too attenuated to establish personal jurisdiction in medical malpractice action under the long-arm statute, where there was no evidence physician decided to transfer patient to Maryland hospital, that substantial source of her income stemmed from Maryland hospital receiving patients from DC hospital, or that she paid to be listed on Maryland hospital's website. *Peluzzo v. Leiboff*, 133 WLR 111 (Super. Ct. 2005).

CHAPTER 4A. INTERSTATE DEPOSITIONS AND DISCOVERY, UNIFORM ACT.

Sec.

13-441. Short title.

13-442. Definitions.

13-443. Issuance of subpoena.

13-444. Service of subpoena.

13-445. Deposition, production, and inspection.

Sec.

13-446. Application to Superior Court.

13-447. Uniformity of application and construction.

13-448. Application to pending actions.

§ 13-441. Short title.

This chapter may be cited as the “Uniform Interstate Depositions and Discovery Act”.

(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Legislative history of Law 18-147. — Law 18-147, the “Uniform Interstate Depositions and Discovery Act of 2010”, was introduced in Council and assigned Bill No. 18-426, which was referred to the Committee on Public Safety and the Judiciary. The bill was adopted on first and second readings on February 2, 2010, and March 2, 2010, respectively. Signed by the

Mayor on March 18, 2010, it was assigned Act No. 18-330 and transmitted to both Houses of Congress for its review. D.C. Law 18-147 became effective on May 22, 2010.

Editor’s notes. — Uniform Law: This section is based upon § 1 of the Uniform Interstate Depositions and Discovery Act.

§ 13-442. Definitions.

For the purposes of this chapter, the term:

(1) “Foreign jurisdiction” means a state other than the District of Columbia.

(2) “Foreign subpoena” means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(4) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(5) “Subpoena” means a document, however denominated, issued under authority of a court of record requiring a person to:

(A) Attend and give testimony at a deposition;

(B) Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(C) Permit inspection of premises under the control of the person.

(6) “Superior Court” means the Superior Court of the District of Columbia.

(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Legislative history of Law 18-147. — For Law 18-147, see notes following § 13-441.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 2 of the Uniform Interstate Depositions and Discovery Act.

§ 13-443. Issuance of subpoena.

(a) To request issuance of a subpoena under this section, a party shall submit a foreign subpoena to the Clerk of the Superior Court. A request for the issuance of a subpoena under this chapter does not constitute an appearance in the courts of the District of Columbia.

(b) When a party submits a foreign subpoena to the Clerk of the Superior Court, the clerk, in accordance with the Rules of the Superior Court, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(c) A subpoena under subsection (b) of this section shall:

(A) Incorporate the terms used in the foreign subpoena; and

(B) Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Legislative history of Law 18-147. — For Law 18-147, see notes following § 13-441.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 3 of the Uniform Interstate Depositions and Discovery Act.

§ 13-444. Service of subpoena.

A subpoena issued by a Clerk of Superior Court under § 13-443 shall be served in compliance with § 11-942 and applicable rules of the Superior Court for the service of subpoenas.

(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Legislative history of Law 18-147. — For Law 18-147, see notes following § 13-441.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 4 of the Uniform Interstate Depositions and Discovery Act.

§ 13-445. Deposition, production, and inspection.

The rules of the Superior Court applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued under § 13-443.

(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Legislative history of Law 18-147. — For Law 18-147, see notes following § 13-441.

Editor's notes. — Uniform Law: This sec-

tion is based upon § 5 of the Uniform Interstate Depositions and Discovery Act.

§ 13-446. Application to Superior Court.

An application to the Superior Court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under § 13-443 shall comply with the Rules of the Superior Court and laws of the District and shall be submitted to the Superior Court.

(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Legislative history of Law 18-147. — For Law 18-147, see notes following § 13-441. tion is based upon § 6 of the Uniform Interstate Depositions and Discovery Act.

Editor's notes. — Uniform Law: This sec-

§ 13-447. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it[.]

(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Legislative history of Law 18-147. — For Law 18-147, see notes following § 13-441. tion is based upon § 7 of the Uniform Interstate Depositions and Discovery Act.

Editor's notes. — Uniform Law: This sec-

§ 13-448. Application to pending actions.

This chapter applies to requests for discovery in cases pending on May 22, 2010.

(May 22, 2010, D.C. Law 18-147, § 2(b), 57 DCR 2552.)

Legislative history of Law 18-147. — For Law 18-147, see notes following § 13-441. tion is based upon § 8 of the Uniform Interstate Depositions and Discovery Act.

Editor's notes. — Uniform Law: This sec-

CHAPTER 5. COUNTERCLAIMS.

Sec.

13-501. Counterclaim by way of set-off as an action by defendant.

13-502. Effect of assignment.

13-503. Action against principal and sureties.

Sec.

13-504. Action by trustee.

13-505. Action by or against executor or administrator.

§ 13-501. Counterclaim by way of set-off as an action by defendant.

In a civil action, a defendant who files a counterclaim by way of set-off shall be deemed to have brought an action at the time of filing the counterclaim for the matters mentioned therein.

(Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 13-501. 1973 Ed., § 13-501.

§ 13-502. Effect of assignment.

When cross-demands have existed between persons under such circumstances that if one had brought an action against the other a counterclaim could have been pleaded, neither can be deprived of the benefit thereof by an assignment by the other; but in an action by the assignee of a nonnegotiable debt the defendant may set off by counterclaim any indebtedness to him of the assignor, existing before notice of the assignment, as well as any indebtedness to him of the plaintiff.

(Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 13-502. 1973 Ed., § 13-502.

CASE NOTES**In general.**

Claim of debtor against physician for abuse of process was not a proper counterclaim in action by physician's assignee to recover for services rendered by physician, in absence of any showing that assignee accepted assignment of money claimed subject to existing claims which debtor had against assignor at time of assignment. D.C. Code SCR, Civil Rule 13(b); D.C. Code § 13-502. *Yellowitz v. J.H. Marshall & Associates, Inc.*, 284 A.2d 665, 1971 D.C. App. LEXIS 250 (1971).

Statute providing that in an action by assignee of nonnegotiable debt the defendant may set off by counterclaim any indebtedness of assignor existing before notice of assignment does not authorize counterclaim in form of cause of action in tort for unliquidated damages against assignee of tort-feasor, and so long as a contingent liability in tort is unlitigated it is not yet an "indebtedness" within meaning of statute. D.C. Code § 13-502. *Yellowitz v. J.H. Marshall & Associates, Inc.*, 284 A.2d 665, 1971 D.C. App. LEXIS 250 (1971).

§ 13-503. Action against principal and sureties.

In an action against principal and sureties, an indebtedness of the plaintiff to the principal may be set off by counterclaim as if he were the sole defendant. When the indebtedness so set off exceeds the plaintiff's demand, the judgment for the excess shall be in favor of the defendant who is sued as principal.

(Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 13-503. 1973 Ed., § 13-503.

§ 13-504. Action by trustee.

When the plaintiff in a civil action is trustee for another, or has no actual interest in the contract on which the action is founded, a demand against the plaintiff may not be pleaded by way of counterclaim, but a demand against the person whom he represents or for whose benefit the action is brought may be pleaded.

(Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 13-504. 1973 Ed., § 13-504.

§ 13-505. Action by or against executor or administrator.

In an action against an executor or administrator, in his representative capacity, the defendant may plead, by way of counterclaim, a demand belonging to the decedent where he would have been entitled to rely upon the demand in an action against him; and in an action brought by an executor or administrator, in his representative capacity, a demand against the decedent, belonging at the time of his death to the defendant, may be pleaded by way of counterclaim, as if the action had been brought by the decedent in his lifetime.

(Dec. 23, 1963, 77 Stat. 516, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 13-505. 1973 Ed., § 13-505.

CHAPTER 7. TRIAL [REPEALED].

Sec.
13-701, 13-702.[Repealed].

§ 13-701. Special juries in District Court. [Repealed].

Repealed.

(Mar. 27, 1968, 82 Stat. 62, Pub. L. 90-274, § 103(a).)

Prior Codifications. — 1981 Ed., § 13-701.

§ 13-702. Jury trials in civil cases in Court of General Sessions. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 142(5)(A).)

Prior Codifications. — 1981 Ed., § 13-702.

TITLE 14. PROOF.

Chapter

1. Evidence Generally; Depositions.
3. Competency of Witnesses.
5. Documentary Evidence.
7. Absence for Seven Years.

CHAPTER 1. EVIDENCE GENERALLY; DEPOSITIONS.

- | | |
|--|---|
| Sec. | Sec. |
| 14-101. Evidence under oath; affirmation in lieu of oath; perjury. | 14-104. Testimony of nonresident witnesses for use in Superior Court. |
| 14-102. Impeachment of witnesses. | |
| 14-103. Depositions for use in State and Territorial Courts. | |

§ 14-101. Evidence under oath; affirmation in lieu of oath; perjury.

(a) All evidence shall be given under oath according to the forms of the common law.

(b) A witness who has conscientious scruples against taking an oath, may, in lieu thereof, solemnly, sincerely, and truly declare and affirm. Where an application, statement, or declaration is required to be supported or verified by an oath, the affirmation is the equivalent of an oath.

(c) Whoever swears, affirms, declares, or gives testimony in any form, where an oath is authorized by law, is lawfully sworn, and is guilty of perjury in a case where he would be guilty of that crime if sworn according to the forms of the common law.

(Dec. 23, 1963, 77 Stat. 517, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 14-101. 1973 Ed., § 14-101.	15-354 provided that Title 14 is designated Title 14 of the District of Columbia Official Code.
--	---

Editor's notes. — Section 26 of D.C. Law

CASE NOTES

ANALYSIS

Affirmation in lieu of oath.
Due process.
In general.
Relevancy.

Affirmation in lieu of oath.

The affirmation of a witness who testified that he did not believe in God of the Bible by requiring him to solemnly affirm and declare that the testimony that he would give in the case was the truth, the whole truth, and nothing but the truth under pain and penalty of perjury, was sufficient. D.C. Code 1940, § 14-101; Fed.Rules Crim.Proc., rule 26, 18 U.S.C.

Gillars v. U.S., 182 F.2d 962, 1950 U.S. App. LEXIS 2893 (C.A.D.C. 1950).

Before a witness can be admitted to testify upon affirmation, instead of an oath, the court must be satisfied that he is one of a society who profess to be conscientiously scrupulous of taking an oath. King v. Fearson, 14 F.Cas. 520, 1829 U.S. App. LEXIS 353 (1829).

Where a witness is considered by the Society of Quakers as a member of that society in principle and religious profession, and usually meets with them for religious worship, and has applied to be admitted to a full participation of all the civil privileges and the moral discipline of the society, he may be permitted to testify

upon solemn affirmation, instead of an oath. *King v. Fearson*, 14 F.Cas. 520, 1829 U.S. App. LEXIS 353 (1829).

Due process.

Finding of disciplinary violations and recommendation of disbarment of attorney by Board on Professional Responsibility, which were not based on any proof under oath, denied attorney due process; hearing committee, before concluding that disbarment was proper sanction, should have proceeded with ex parte hearing to establish by sworn evidence that specification of charges was true, though attorney failed to answer. D.C. Code 1981, §§ 11-2503(b), 14-101(a); Bar Rule 11, § 7(2); U.S. Const. Amends. 5, 14. *Matter of Williams*, 464 A.2d 115, 1983 D.C. App. LEXIS 430 (1983).

In general.

A mere proffer is not evidence. *In re Ko.W.*, 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

A finding as to a critical disputed fact cannot be made on the basis of an unsubstantiated proffer. *In re Ko.W.*, 774 A.2d 296, 2001 D.C. App. LEXIS 126 (2001).

Anonymous detective who provided orientation information to the grand jury, after it was empaneled but before it considered distribution of cocaine case against defendant, should have been under oath, as background information he provided about the behavior of typical narcotics users and sellers was evidence. *Williams v. United States*, 757 A.2d 100, 2000 D.C. App. LEXIS 191 (2000).

Any defendant is entitled to insist that all information presented to the grand jury be provided only by witnesses who are under the solemnity of an oath. *Williams v. United States*, 757 A.2d 100, 2000 D.C. App. LEXIS 191 (2000).

Error was harmless in allowing anonymous detective to provide orientation information to the grand jury, after it was empaneled but before it considered distribution of cocaine case against defendant, without his being sworn; the violation had no substantial influence on the grand jury's decision to indict. *Williams v. United States*, 757 A.2d 100, 2000 D.C. App. LEXIS 191 (2000).

In proceeding by mother to have daughter committed to psychiatric school on ground that

daughter was habitually beyond mother's control, daughter had right to insist that facts be presented by witnesses who were under oath in view of fact that daughter's liberty was involved. D.C. Code 1951, §§ 11-904, 11-915, 14-101. *In re Sippy*, 97 A.2d 455, 1953 D.C. App. LEXIS 145 (Cr.App. 1953).

Relevancy.

To be relevant, evidence must tend to make the existence or nonexistence of a fact more or less probable than would be the case without that evidence. *Butts v. United States*, 822 A.2d 407, 2003 D.C. App. LEXIS 227 (2003).

A defendant's right to pursue a particular line of cross-examination is circumscribed by general principles of relevance. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

Relevant evidence is that which tends to make the existence or nonexistence of a fact more or less probable than would be the case without that evidence. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

For evidence to be "relevant," it must be related logically to the fact that it is offered to prove, the fact sought to be established by the evidence must be material, and the evidence must be adequately probative of the fact it tends to establish. *Foreman v. United States*, 792 A.2d 1043, 2002 D.C. App. LEXIS 44 (2002).

A trial court's ruling concerning the relevance of evidence rests within the discretion of the trial court and will be upset only upon a showing of abuse. *Foreman v. United States*, 792 A.2d 1043, 2002 D.C. App. LEXIS 44 (2002).

Unless evidence of a witness's fear and/or intimidation of witnesses is closely tied and probative as to a particular defendant, or a defendant opens the door to such evidence, the evidence should not be admitted. *Foreman v. United States*, 792 A.2d 1043, 2002 D.C. App. LEXIS 44 (2002).

§ 14-102. Impeachment of witnesses.

(a) The credibility of a witness may be attacked by any party, including the party calling the witness.

(b) A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is (1) inconsistent with the declarant's testimony, and was given

under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (2) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the witness of recent fabrication or improper influence or motive, or (3) an identification of a person made after perceiving the person. Such prior statements are substantive evidence.

(Dec. 23, 1963, 77 Stat. 518, Pub. L. 88-241, § 1; May 23, 1995, D.C. Law 10-256, § 4, 42 DCR 20; Apr. 18, 1996, D.C. Law 11-110, § 23, 43 DCR 530.)

Prior Codifications. — 1981 Ed., § 14-102. 1973 Ed., § 14-102.

Legislative history of Law 10-256. — Law 10-256, the "Public Safety and Law Enforcement Support Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-628, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-375 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

CASE NOTES

ANALYSIS

Admissions.

Collateral issues.

Credibility of witness.

Ex post facto.

Hearsay.

Inconsistent statements.

—Effect of impeachment by inconsistent statements.

—In general.

—Laying foundation for proof of inconsistent statements.

—Witnesses who may be impeached by inconsistent statements.

—Written statements or instruments, inconsistent statements.

Instructions, generally.

Prior arrests and convictions.

Prior consistent statements.

Prior identification.

Remand.

Review.

—Admission of evidence, review.

—Examination of witnesses, review.

—In general.

—Instructions, review.

Right to impeach one's own witness.

Admissions.

Requirement of corroborating circumstances warranting admission of statements against penal interest plainly goes beyond minimal corroboration, for the circumstances must

"clearly" indicate the trustworthiness of the statement; nevertheless, the standard is not unrealistically severe. *Ingram v. United States*, 885 A.2d 257, 2005 D.C. App. LEXIS 533 (2005).

Witness's oral jailhouse confession to defendant's attorney was adequately corroborated, for purposes of determining whether confession was admissible under hearsay exception for statements against penal interest; witness was on scene, smoking marijuana and drinking with victim and defendant, according to attorney, witness indicated that he had compelling motive to kill victim and that he proposed to finish the job following his release from jail, and material tending to corroborate witness's confession was contained in his grand jury testimony, notwithstanding witness's denial before grand jury that he committed crime. *Ingram v. United States*, 885 A.2d 257, 2005 D.C. App. LEXIS 533 (2005).

Trial judge's differentiation between a statement to defendant's attorney and a statement to a law enforcement officer, for purposes of determining whether witness's confession to defendant's attorney was admissible under hearsay exception for statements against penal interest, was erroneous as a matter of law; witness's confession to attorney was at least as incriminating as one made to a law enforcement officer, and indisputably subjected witness to potential criminal prosecution and conviction. *Ingram v. United States*, 885 A.2d 257, 2005 D.C. App. LEXIS 533 (2005).

Rule of evidence governing admission of hearsay as a declaration against penal interest requires three-step inquiry to ascertain: (1) whether the declarant, in fact, made a statement; (2) whether the declarant is unavailable; and (3) whether corroborating circumstances clearly indicate the trustworthiness of the statement. *Ingram v. United States*, 885 A.2d 257, 2005 D.C. App. LEXIS 533 (2005).

Ruling that precluded defendant in robbery prosecution from cross-examining alleged accomplice, who testified against his will pursuant to a grant of immunity, about a "promise" from the government regarding his sentencing was not abuse of discretion, where alleged accomplice testified on direct examination that he had rejected government's offer without asking for details and also denied receiving any government promises or "assurances" after he refused to testify voluntarily. *Ifelowo v. United States*, 778 A.2d 285, 2001 D.C. App. LEXIS 161 (2001).

Admitting hearsay as a statement against penal interest requires a fact-intensive determination of the surrounding circumstances and, in particular, trustworthiness of the statement. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

To admit hearsay as a declaration against penal interest, the trial judge must undertake a three-step inquiry to ascertain (1) whether the declarant, in fact, made a statement; (2) whether the declarant is unavailable; and (3) whether corroborating circumstances clearly indicate the trustworthiness of the statement. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Street level drug dealer's statements about the defendant's payment dispute with the murder victim, another drug runner, lacked guarantees of trustworthiness and were inadmissible under the confrontation clause and the hearsay exception for statements against penal interest; part of the police officer's narration of the statements and related conversations centered on the dispute between the victim and defendant and did not tend to expose the dealer to criminal liability, the defendant's alleged debt to the dealer revealed a bias, and the trial court improperly looked at the results of the police investigation, rather than circumstances that would prompt the dealer to deflect attention from himself. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

The trustworthiness of a hearsay statement allegedly against penal interest is determined primarily by analysis of two elements: the probable veracity of the in-court witness and the reliability of the out-of-court declarant. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

In order to determine whether the corroboration factor has been met for a hearsay statement allegedly against penal interest, the trial court may look at the time the statement was made and to whom it was made, the existence of corroborating evidence in the case, and the extent to which the declaration is truly against the declarant's penal interest. *Doret v. United States*, 765 A.2d 47, 2000 D.C. App. LEXIS 285 (2000), writ of certiorari denied by 532 U.S. 1030, 121 S. Ct. 1980, 149 L. Ed. 2d 772, 2001 U.S. LEXIS 3750, 69 U.S.L.W. 3729 (2001).

Admissions of a party opponent or "statements of the defendant" exception to hearsay rule operates on theory that declarant can refute admission or explain its circumstances by taking the stand. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

An admission of a party opponent is admissible not only to impeach, but also as affirmative evidence of the truth of the statement. *Chaabi v. United States*, 544 A.2d 1247, 1988 D.C. App. LEXIS 115 (1988).

Admissions do not require foundations, even where they are also prior inconsistent statements. *Chaabi v. United States*, 544 A.2d 1247, 1988 D.C. App. LEXIS 115 (1988).

Where defendant, after being informed of his rights, voluntarily elected to speak to police, prosecution could subsequently impeach defendant's trial testimony on basis of statements voluntarily made. *Beale v. United States*, 465 A.2d 796, 1983 D.C. App. LEXIS 411 (1983), writ of certiorari denied by 465 U.S. 1030, 104 S. Ct. 1293, 79 L. Ed. 2d 694, 1984 U.S. LEXIS 1150, 52 U.S.L.W. 3611 (1984).

Only where witness to be impeached, having been asked about prior statement as required by statute, not only acknowledges having made it but affirms its truth at trial, is that statement admissible in delinquency proceedings as

substantive proof of the matter asserted as an adoptive statement of admission. In re O., 400 A.2d 1055, 1979 D.C. App. LEXIS 346 (1979).

Collateral issues.

Defense witness's testimony about defendant's dishonesty in his relationship with her was collateral, and thus, extrinsic evidence was not admissible to impeach witness. Rowland v. United States, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Status of safety policy of vice unit of which the allegedly suicidal victim was a member was not collateral, and thus, extrinsic evidence was admissible to contradict witness on the matter; status of unit was independently relevant to issue of whether victim's violation of policy was serious enough to contribute to her supposed despondency. Rowland v. United States, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Witness's testimony that defendant had made suicidal gestures with his service weapon similar to suicidal gestures that defendant attributed to victim was a non-collateral matter, and thus, extrinsic evidence was admissible to contradict witness on the matter; trial court reasonably could have deemed such evidence to be independently admissible on question whether defendant was drawing on his own experience to fabricate his claims about victim. Rowland v. United States, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Issue of whether victim had made a suicidal gesture, as defense witness testified, was not a collateral matter, and thus, prosecution was entitled to present extrinsic evidence that witness had made prior inconsistent statements about matter; matter bore on whether victim actually did commit suicide in defendant's apartment as he claimed. Rowland v. United States, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Extrinsic evidence is non-collateral, and thus admissible to contradict witness, when it relates to a so-called "linchpin" fact; under this prong of test, for purposes of impeachment a part of witness's story may be attacked where as a matter of human experience, he could not be mistaken about that fact if thrust of his testimony on historical merits was true. Rowland v. United States, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Matter is non-collateral, and extrinsic evidence consequently admissible to contradict witness, if matter is itself relevant to a fact of consequence on historical merits of case. Rowland v. United States, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Party may not present extrinsic evidence to impeach witness on collateral issues. Rowland v. United States, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Credibility of witness.

Letter provided by prosecutor to murder de-

fendant's attorney, advising that lead detective in the case was being investigated concerning allegations that detective had coached witnesses in another case to be untruthful, was admissible in murder prosecution as impeachment evidence to expose detective's potential credibility problems and bias in favor of the prosecution, where defense counsel repeatedly asked detective whether she had coached a key witness in present case and detective denied having done so. Smith v. United States, 26 A.3d 248, 2011 D.C. App. LEXIS 432 (2011).

Ex post facto.

Retroactive application of statutory provision which permitted witness' prior inconsistent statements given under oath before Grand Jury to be admitted as substantive evidence, as well as for impeachment purposes, which was passed subsequent to crime for which defendant was tried, but prior to his trial, did not violate Ex Post Facto Clause, even though application of statute in prosecution for robbery while armed and felony murder while armed worked to defendant's disadvantage; statute did not criminalize behavior not previously a crime or make punishment more burdensome, and it did not deprive defendant of defense by changing ingredients of offense or ultimate facts necessary to establish guilt. U.S. Const. Art. 1, § 9, cl. 3; D.C. Code 1981, § 14-102(b). Jones v. United States, 719 A.2d 92, 1998 D.C. App. LEXIS 194 (1998).

Hearsay.

An unavailable witness's grand jury testimony is admissible as substantive evidence at trial. Mercer v. United States, 864 A.2d 110, 2004 D.C. App. LEXIS 579 (2004), writ of certiorari denied by 543 U.S. 1188, 125 S. Ct. 1425, 161 L. Ed. 2d 191, 2005 U.S. LEXIS 2103, 73 U.S.L.W. 3513 (2005).

In order to hold that a statement qualifies as an excited, or spontaneous utterance, the trial court must find that it satisfies three requirements: (1) the presence of a serious occurrence which causes a state of nervous excitement or physical shock in the declarant; (2) a declaration made within a reasonably short period of time after the occurrence so as to assure that the declarant has not reflected upon his statement or premeditated or constructed it; and (3) the presence of circumstances, which in their totality suggest spontaneity and sincerity of the remark. Williams v. United States, 859 A.2d 130, 2004 D.C. App. LEXIS 452 (2004).

When a witness testifies under oath and adopts a prior statement not made under oath, that prior statement becomes substantive evidence. Williams v. United States, 859 A.2d 130, 2004 D.C. App. LEXIS 452 (2004).

Complainant's testimony that she told defendant during telephone calls that he was violat-

ing civil protection order (CPO) was not hearsay in criminal contempt hearing; testimony was not elicited to prove that defendant violated CPO but, rather, to show that he was aware of its existence and requirements. In re Dixon, 853 A.2d 708, 2004 D.C. App. LEXIS 391 (2004).

"Hearsay" is a statement, other than one made by the declarant while testifying at a trial, offered to prove the truth of the matter asserted. In re Dixon, 853 A.2d 708, 2004 D.C. App. LEXIS 391 (2004).

An out-of-court statement is not hearsay if it is offered for a purpose other than to prove the truth of the matter asserted. In re Dixon, 853 A.2d 708, 2004 D.C. App. LEXIS 391 (2004).

The classic present sense impression relates contemporaneous events or conditions as they are perceived by the observer's senses, for purposes of the present sense impression exception to the hearsay rule. Hallums v. United States, 841 A.2d 1270, 2004 D.C. App. LEXIS 48 (2004).

Statements describing or explaining events which the declarant is observing at the time he or she makes the declaration or immediately thereafter are admissible under the hearsay exception for present sense impression, and the declarant need not be available for cross-examination to admit a statement under the exception. Hallums v. United States, 841 A.2d 1270, 2004 D.C. App. LEXIS 48 (2004).

Hearsay statements may be admitted under the excited utterance exception if the following prerequisites are met: (1) the presence of a serious occurrence which causes a state of nervous excitement or physical shock in the declarant; (2) a declaration made within a reasonably short period of time after the occurrence so as to assure that the declarant has not reflected upon his statement or premeditated or constructed it; and (3) the presence of circumstances, which in their totality suggest spontaneity and sincerity of the remark. Hallums v. United States, 841 A.2d 1270, 2004 D.C. App. LEXIS 48 (2004).

Medical expert's testimony that victim's medical records indicated that victim had told medical personnel that defendant "had sexually abused her," that she "was molested at his home after school," and that "it happened a lot of times" was admissible under prior identification exception to hearsay rule, in prosecution for first-degree child sexual abuse; no details of the incidents themselves were divulged in the statements. Brown v. United States, 840 A.2d 82, 2004 D.C. App. LEXIS 2 (2004).

Detective's testimony that victim told her, during interview at police headquarters, that "she was assaulted by [defendant]" was admissible under prior identification exception to hearsay rule, in prosecution for first-degree

child sexual abuse. Brown v. United States, 840 A.2d 82, 2004 D.C. App. LEXIS 2 (2004).

The prior identification exception to the hearsay rule does not apply to detailed accounts of the actual crime, and the declarant's description of the offense is admissible under such hearsay exception only to the extent necessary to make the identification understandable to the jury. Brown v. United States, 840 A.2d 82, 2004 D.C. App. LEXIS 2 (2004).

To admit testimony under the prior identification exception to the hearsay rule, the identifying witness must be available for cross-examination. Brown v. United States, 840 A.2d 82, 2004 D.C. App. LEXIS 2 (2004).

The rationale behind the prior identification exception to the hearsay rule is that the earlier identification has greater probative value than an identification made in the courtroom after the suggestions of others and the circumstances of the trial may have intervened to create a fancied recognition in the witness' mind. Brown v. United States, 840 A.2d 82, 2004 D.C. App. LEXIS 2 (2004).

The prior identification exception to the hearsay rule allows the admission of out-of-court statements through the testimony of either the identifier or a third party who was present when the identification was made. Brown v. United States, 840 A.2d 82, 2004 D.C. App. LEXIS 2 (2004).

Statements from rape victim's granddaughter and from police officer regarding victim's out of court identification of defendant as "show-up" identification were not hearsay, where granddaughter and officer testified at trial, they were subject to cross-examination concerning the statements, and the statements were in regards to an identification of a person made after perceiving the person. Redmond v. United States, 829 A.2d 229, 2003 D.C. App. LEXIS 474 (2003), writ of certiorari denied by 543 U.S. 914, 125 S. Ct. 119, 160 L. Ed. 2d 196, 2004 U.S. LEXIS 6192, 73 U.S.L.W. 3214 (2004).

Testimony that an accused adopted statements of another person as his own may be admitted in evidence as an exception to the hearsay rule if it clearly appears that the accused understood and unambiguously assented to the statements. Foreman v. United States, 792 A.2d 1043, 2002 D.C. App. LEXIS 44 (2002).

To constitute an admission by silence, for purposes of the adoptive admission exception to the hearsay rule, the statement must be made in the defendant's presence and hearing, and the defendant must actually understand what was said and have an opportunity to deny it. Foreman v. United States, 792 A.2d 1043, 2002 D.C. App. LEXIS 44 (2002).

As a threshold matter, before admitting a statement under the adoptive admission excep-

tion to the hearsay rule, trial judge must make preliminary determination whether jury could reasonably conclude that defendant unambiguously adopted another person's incriminating statement. *Foreman v. United States*, 792 A.2d 1043, 2002 D.C. App. LEXIS 44 (2002).

Erroneous admission of hearsay in the form of insurance companies' letters stating that the companies never issued a policy to the alleged tort-feasor entitled an automobile insurer to a new trial in a suit to recover uninsured motorist (UM) benefits. *Allstate Ins. Co. v. Curtis*, 781 A.2d 725, 2001 D.C. App. LEXIS 203 (2001).

Insurance companies' letters stating that the companies never issued a policy to the alleged tort-feasor were inadmissible under the business records exception to the hearsay rule in an action to recover uninsured motorist (UM) benefits; the insured received the letters in response to her attorney's inquiries to four companies and never laid a foundation through a competent witness. *Allstate Ins. Co. v. Curtis*, 781 A.2d 725, 2001 D.C. App. LEXIS 203 (2001).

Once hearsay evidence is admitted without objection, it may be properly considered by the trier of fact and given its full probative value. *Dean v. Garland*, 779 A.2d 911, 2001 D.C. App. LEXIS 189 (2001), writ of certiorari denied by 536 U.S. 924, 122 S. Ct. 2591, 153 L. Ed. 2d 780, 2002 U.S. LEXIS 4497, 70 U.S.L.W. 3774 (2002).

There was no plain error as to admission of Housing and Urban Development (HUD) inspection report in home purchasers' action against vendor and real estate agent, even if the report was hearsay; if purchasers had made a timely hearsay objection in the trial court, the author of the report could have been subpoenaed and made available to testify at trial. *Dean v. Garland*, 779 A.2d 911, 2001 D.C. App. LEXIS 189 (2001), writ of certiorari denied by 536 U.S. 924, 122 S. Ct. 2591, 153 L. Ed. 2d 780, 2002 U.S. LEXIS 4497, 70 U.S.L.W. 3774 (2002).

Statement concerning a "beef" involving the defendant as a reason why the victim thought that the defendant was one assailant was not hearsay where it was offered to show what effect it had on the listener. *Sparks v. United States*, 755 A.2d 394, 2000 D.C. App. LEXIS 109 (2000).

Inconsistent statements.

— Effect of impeachment by inconsistent statements.

A prior inconsistent statement used to impeach a witness is admissible solely to affect the credibility of the witness and is not to be considered as support for the truth of its contents, and such rule applies where a party's own witness is impeached because he has been

determined to be hostile. D.C. Code§ 14-102. *United States v. Gilliam*, 484 F.2d 1093, 1973 U.S. App. LEXIS 7941 (C.A.D.C. 1973).

Prior inconsistent statements introduced to impeach witness could not be considered as substantive evidence. D.C. Code 1961, § 14-102; Fed.Rules Crim.Proc. rule 30, 18 U.S.C. *Byrd v. United States*, 342 F.2d 939, 1965 U.S. App. LEXIS 6866 (C.A.D.C. 1965).

Defendant was not substantially prejudiced at a firearms trial by any impropriety in prosecutor's delay in disclosing mistaken testimony of police officer at a preliminary hearing that he was told by another officer that defendant had slid a firearm underneath a fence, such that trial court could deny defendant's motion for a mistrial based on the delay, which comprised a few hours starting when prosecutor realized that officer had mistakenly testified and ending when officer testified for the defense at trial that the other officer had told him that defendant had thrown the firearm over the fence; officer's reversal of his testimony under oath made officer appear careless and unreliable, defense counsel immediately and effectively responded to the changed testimony by impeaching officer and forcefully argued in closing that officer's testimony by itself created reasonable doubt, officer's prior testimony came in as substantive evidence to impeach other officer's testimony, and defendant's defense did not stand up to reason and would not have been any stronger in the absence of officer's testimony. *Thompson v. United States*, 45 A.3d 688, 2012 D.C. App. LEXIS 298 (2012).

Government witness' grand jury testimony which adopted witness' second statement to police implicating defendant, and the second statement to police, were admissible as nonhearsay prior consistent statements, to rebut defense counsel's assertion during cross-examination of witness that prosecutor had exercised improper influence over witness. *Tyer v. United States*, 912 A.2d 1150, 2006 D.C. App. LEXIS 642 (2006).

Generally, evidence showing the bias or motivation of a witness may be relevant in assessing a witness' credibility, however, it is the responsibility of the trial judge, in the exercise of his or her discretion, to exclude otherwise admissible evidence if its probative value is substantially outweighed by the danger of unfair prejudice. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

While it may be proper to admit evidence to explain the specific behavior of a witness, such as inconsistent statements, delay in testifying, or unusual courtroom demeanor, evidence concerning a witness' fear tends to be extremely prejudicial because it appeals to the passions of the jury and may cause the jury to base its decision on something other than the rule of

law. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

If a motion for a new trial is based on the recantation of a witness, the trial court first determines the credibility of the recantation and that witness's trial testimony; only if the recantation is credible need the court determine the effect that the recantation would have had on the jury. *Gaither v. United States*, 759 A.2d 655, 2000 D.C. App. LEXIS 229 (2000), amended by, remanded by 816 A.2d 791, 2003 D.C. App. LEXIS 24 (D.C. 2003).

Sole purpose of impeachment of party's own witness with prior inconsistent statement is to cancel or neutralize any damaging effect of surprising testimony and not to supply anticipated testimony. D.C. Code 1981, § 14-102. In re D.A., 597 A.2d 1331, 1991 D.C. App. LEXIS 291 (1991).

— In general.

Victim's prior statements before grand jury that identified defendants as robbers were admissible under statute stating that prior inconsistent statement is not regarded as hearsay if declarant testifies at trial and is subject to cross-examination, and if prior statement was made under oath subject to penalty of perjury, where court allowed prosecutor to confront victim with his prior grand jury testimony when victim testified that he could not remember having recognized the two robbers, victim admitted at trial that he was not at all hesitant in his identifications when testifying under oath before grand jury and that, barely week before trial, he had not expressed any confusion or uncertainty about who robbers were, victim acknowledged that, in all of his conversations with prosecutor before trial, he had identified robbers as defendants, and both defense attorneys cross-examined victim about inconsistency between his testimony and his prior statements of identification. *Lewis v. United States*, 996 A.2d 824, 2010 D.C. App. LEXIS 340 (2010).

When a witness testifies under oath and adopts a statement not made under oath, that prior statement becomes substantive evidence. *Tyer v. United States*, 912 A.2d 1150, 2006 D.C. App. LEXIS 642 (2006).

Where the alibi witness knows that the defendant is represented by counsel, no inference of fabricated testimony can be drawn from the witness's failure to inform the authorities of the information in her possession, because the witness might reasonably presume that it was sufficient for her to relate her knowledge to the attorney retained or appointed to represent the defendant. *Matthews v. United States*, 892 A.2d 1100, 2006 D.C. App. LEXIS 10 (2006).

A prior inconsistent statement is insufficient to preclude the introduction of a co-defendant's testimony when it becomes available. *Smith v.*

United States, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Audio recording of assault victim's grand jury testimony was admissible to impeach the victim, in prosecution for assault with intent to kill while armed, where prosecution confronted victim with his grand jury testimony, gave him an opportunity to explain or deny his prior inconsistent statements, and afforded defendant the opportunity to cross-examine the victim. *McConnaughey v. United States*, 804 A.2d 334, 2002 D.C. App. LEXIS 436 (2002).

Evidence of a witness' generalized fear, not specifically a fear of the defendant, may be admissible, in the court's discretion, to show bias or motive when the witness has previously withheld information or makes conflicting statements. *Parker v. United States*, 797 A.2d 1245, 2002 D.C. App. LEXIS 106 (2002).

On an attempt to impeach a witness's testimony because of an omission in prior statement, the trial court is asked to simply decide whether the prior statement failed to mention a material circumstance presently testified to, which it would have been natural to mention in the prior statement. *Mindombe v. United States*, 795 A.2d 39, 2002 D.C. App. LEXIS 71 (2002), writ of certiorari denied by 537 U.S. 1234, 123 S. Ct. 1355, 155 L. Ed. 2d 200, 2003 U.S. LEXIS 1790, 71 U.S.L.W. 3566 (2003).

Prior inconsistent statement that government's principal witness wrote during plea proceeding in federal court, which was a sworn factual statement of his participation in defendants' fraudulent scheme to use Water and Sewer Authority (WASA) equipment for their own purposes, was properly admitted as substantive evidence; witness was on stand when statement was offered into evidence by the government for impeachment purposes, and since statement was introduced at conclusion of witness's direct testimony, defense attorneys had opportunity to use it during cross-examination. *Bell v. United States*, 790 A.2d 523, 2002 D.C. App. LEXIS 9 (2002).

While witness's testimony that her reluctance to testify consistently with her grand jury testimony in drug and murder prosecution was because she was afraid, and that the only reason she was testifying was because the prosecutor came to get her and that she never wanted to participate in the proceedings was relevant in addressing defense counsel's allegation that the witness had been intimidated into giving false testimony by the government, witness's further testimony that she was reluctant to testify and had changed her testimony because she was fearful of defendants, was substantially more prejudicial than probative. *Gordon v. United States*, 783 A.2d 575, 2001 D.C. App. LEXIS 223 (2001).

In the absence of statutory preclusion, there was nothing in area of Fifth Amendment juris-

prudence preventing Government's use of legally obtained pre-trial statements of rape defendant for impeachment purposes. *Bobb v. United States*, 758 A.2d 958, 2000 D.C. App. LEXIS 207 (2000), writ of certiorari denied by 531 U.S. 1099, 121 S. Ct. 832, 148 L. Ed. 2d 713, 2001 U.S. LEXIS 552, 69 U.S.L.W. 3458 (2001).

Where impeachment is designed to correct contradictory statements in defendant's direct testimony at trial, burden on a defendant's right to testify at trial, as a result of likely possibility that prior inconsistent testimony from a suppression hearing will be introduced as impeachment at trial, is outweighed by necessity of probing trustworthiness of evidence at trial. *Bobb v. United States*, 758 A.2d 958, 2000 D.C. App. LEXIS 207 (2000), writ of certiorari denied by 531 U.S. 1099, 121 S. Ct. 832, 148 L. Ed. 2d 713, 2001 U.S. LEXIS 552, 69 U.S.L.W. 3458 (2001).

Aggravated assault victim's prior statements identifying the defendant were admissible as substantive evidence, even though the victim was uncertain of, or recanted, the prior identification at trial; the victim testified and was subject to cross-examination and knew the defendant for at least twenty years, and the identifications were reliable and trustworthy. *Sparks v. United States*, 755 A.2d 394, 2000 D.C. App. LEXIS 109 (2000).

Details of assault victim's prior inconsistent statements identifying the defendant were admissible through the testimony of law enforcement officers to impeach the victim after he testified that he could not identify the assailant. *Sparks v. United States*, 755 A.2d 394, 2000 D.C. App. LEXIS 109 (2000).

When witness adopts prior inconsistent statement, prior statement may be used as substantive evidence. D.C. Code 1981, § 14-102. *Byers v. United States*, 649 A.2d 279, 1994 D.C. App. LEXIS 190 (1994).

Witness' prior statements are admissible only to show that witness is unbelievable; previous statements can be used only to neutralize affirmative harm and not to supply anticipated testimony. *Hawkins v. United States*, 606 A.2d 753, 1992 D.C. App. LEXIS 93 (1992).

Prosecutor's awareness that witness would not comply with government's subpoena and assertion that he would have to be arrested in order to be brought before court did not preclude prosecutor from making successful claim of surprise that witness' testimony on stand differed with his grand jury testimony. *Hawkins v. United States*, 606 A.2d 753, 1992 D.C. App. LEXIS 93 (1992).

Prosecutor may rely on witness' prior testimony given under oath, under presumption that witness understood ramifications of committing perjury. *Hawkins v. United States*, 606 A.2d 753, 1992 D.C. App. LEXIS 93 (1992).

Trial court did not abuse its discretion in allowing portions of witness' grand jury testimony to be read to witness for purpose of impeaching witness in light of prosecutor's surprise at contradictory testimony. *Fed. Rules Evid. Rules 607, 801(d)(1)*, 18 U.S.C. *Hawkins v. United States*, 606 A.2d 753, 1992 D.C. App. LEXIS 93 (1992).

Prosecution witness' identification of defendant was not required to be suppressed due to prosecution's impeachment of her where she had initially testified at trial that she only knew one person named "Lucky," whose description did not match defendant, and, after impeachment, stated that she knew two individuals by that name and the one who did not match defendant's description was not present at crime scene. D.C. Code 1981, § 14-102. *Stewart v. United States*, 490 A.2d 619, 1985 D.C. App. LEXIS 342 (1985).

In order for an omission to constitute an inconsistency and hence permit impeachment, prior statement must fail to mention material circumstance presently testified to, which it would have been natural to mention in prior statement. *Beale v. United States*, 465 A.2d 796, 1983 D.C. App. LEXIS 411 (1983), writ of certiorari denied by 465 U.S. 1030, 104 S. Ct. 1293, 79 L. Ed. 2d 694, 1984 U.S. LEXIS 1150, 52 U.S.L.W. 3611 (1984).

If the government were positive that one of its witnesses would repudiate a prior statement at trial, it could not be surprised when he did so, and Government was not entitled to claim benefit of statute which allows a party, when surprised by the testimony of his witness, to prove a prior inconsistent statement. D.C. Code § 14-102. *Baker v. United States*, 324 A.2d 194, 1974 D.C. App. LEXIS 256 (1974).

When witness denies giving answer in deposition or does not remember doing so and his recollection is not refreshed on a reading of questions and his answers, deposition should be offered and received as evidence that statements were made but only to affect credibility and not as affirmative evidence. D.C. Code General Sessions Court Rules, § 1, rule 26(d)(1, 2); D.C. Code § 14-102. *Firemen's Ins. Co. v. Henry Fuel Co.*, 245 A.2d 127, 1968 D.C. App. LEXIS 192 (App. 1968).

— Laying foundation for proof of inconsistent statements.

Before actual proof of inconsistent statements may be given by party surprised by testimony of his own witness, witness must be confronted with circumstances of the earlier statement, and he must be asked whether or not he made such statement and be given opportunity to explain. D.C. Code 1961, § 14-102. *Troublefield v. United States*, 372 F.2d 912, 1966 U.S. App. LEXIS 4072 (C.A.D.C. 1966).

Where prosecution witness admitted presence when shooting occurred but denied that he had seen the shooting and swore that he did not know who had done the shooting, and at bench conference the prosecutor presented to trial judge a statement signed by witness inconsistent with such testimony, and witness admitted his signature to statement but swore that he had never seen the paper before, court properly ruled that foundation for surprise had been laid and prosecutor had right to put questions as to inconsistent statement. D.C. Code 1961, § 14-102. *Troublefield v. United States*, 372 F.2d 912, 1966 U.S. App. LEXIS 4072 (C.A.D.C. 1966).

The prosecutor is required to lay a proper foundation for impeachment of an alibi witness with evidence of witness's pretrial silence, which may be accomplished by first demonstrating that the witness was aware of the nature of the charges pending against the defendant, had reason to recognize that he possessed exculpatory information, had a reasonable motive for acting to exonerate the defendant and, finally, was familiar with the means to make such information available to law enforcement authorities. *Matthews v. United States*, 892 A.2d 1100, 2006 D.C. App. LEXIS 10 (2006).

Under 1995 amendment to statute governing impeachment of witnesses, there are two requirements for the use of a prior inconsistent statement as substantive evidence: (1) that the witness be confronted on the witness stand with the prior inconsistent statement, and (2) that the opposing party be given an opportunity to cross-examine the witness concerning the statement. *Bell v. United States*, 790 A.2d 523, 2002 D.C. App. LEXIS 9 (2002).

Defendant charged in triple murder was not entitled to cross-examine prosecution witness concerning her earlier arrest on charges related to gun possession, even though those charges were dropped after police officer amended charges on police report, thus creating confusion as to proper charges, and even though same officer was on scene of triple murder when victim gave police witness's name; while defendant theorized that witness may have falsified testimony in return for continued favorable treatment in triple murder investigation, defendant failed to proffer any evidence of any ongoing relationship between witness and officer or of how witness might have benefitted from her earlier contact with him. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

A trial court does not abuse its discretion by precluding cross-examination to show bias where the connection between the facts cited by defense counsel and the proposed line of questioning is too speculative to support the questions. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Prosecution laid proper foundation for impeachment, with prior statement, of witness that prosecutor anticipated would recount inculpatory admission made to witness by defendant, but who instead testified to exculpatory statement, i.e., that defendant said he was not going to jail for something he did not do; prosecutor expressed surprise and represented to court that testimony was contrary to what witness had told prosecutor, in presence of police officers, several times shortly before trial. D.C. Code 1981, § 14-102. *Byers v. United States*, 649 A.2d 279, 1994 D.C. App. LEXIS 190 (1994).

Necessary foundation for government's impeachment of its own witness with prior inconsistent statement, surprise and affirmative damage to government's case, was shown in homicide prosecution; prosecutor expected that sworn trial testimony would be consistent with prior sworn grand jury testimony identifying defendant as one of people beating victim in alley, rather than with informal discussions with defense representatives, and witness' claim that she had not seen defendant, her brother, in alley was damaging to government's case. D.C. Code 1981, § 14-102. *Byers v. United States*, 649 A.2d 279, 1994 D.C. App. LEXIS 190 (1994).

General rule is that prior inconsistent statements of witness are admissible for purposes of impeachment only and are not admissible as proof of matters contained therein; however, failure to give an immediate limiting instruction when prior inconsistent statement has been introduced does not always constitute plain error. *Stewart v. United States*, 490 A.2d 619, 1985 D.C. App. LEXIS 342 (1985).

— Witnesses who may be impeached by inconsistent statements.

When a party is taken by surprise by the evidence of his witness, the latter may be interrogated as to inconsistent statements previously made by him for purpose of refreshing his recollection and inducing him to correct his testimony, and party so surprised may also show the facts to be otherwise than as stated, although this incidentally tends to discredit the witness. D.C. Code 1961, § 14-102. *Troublefield v. United States*, 372 F.2d 912, 1966 U.S. App. LEXIS 4072 (C.A.D.C. 1966).

Murder defendant did not exhibit bad faith by calling lead detective as witness, and thus was not precluded on that basis from impeaching detective's denial of having coached key witness with a letter provided by prosecutor to defense counsel, advising that lead detective was being investigated concerning allegations that she had coached witnesses in another case to be untruthful; questioning of lead detective helped defendant highlight the fact that key witness had lied to investigators and had im-

plicated defendant only once there was a plea deal for witness containing a sentencing reduction for him. *Smith v. United States*, 26 A.3d 248, 2011 D.C. App. LEXIS 432 (2011).

Government witness' grand jury testimony, which was given under oath and which conflicted with his testimony during cross-examination at murder trial, was admissible as nonhearsay prior inconsistent statement, both for impeachment purposes and as substantive evidence. *Tyer v. United States*, 912 A.2d 1150, 2006 D.C. App. LEXIS 642 (2006).

Cross-examination of an alibi witness regarding their failure to have brought alibi or other exculpatory information to attention of law enforcement is permissible only where the circumstances are such that the witness' normal and natural course of conduct would have been to go to the authorities and furnish the exculpatory information, and typically, this threshold is viewed as depending primarily on the existence of a close relationship between the witness and the defendant. *Matthews v. United States*, 892 A.2d 1100, 2006 D.C. App. LEXIS 10 (2006).

State was not precluded from using eyewitness's testimony from first trial that she remembered testifying for grand jury to lay foundation for introduction of grand jury testimony as prior inconsistent statement that she saw defendant shoot victim, in order to rebut testimony at second trial that she could not remember any events surrounding shooting after she suffered head injuries and series of strokes. *Mercer v. United States*, 864 A.2d 110, 2004 D.C. App. LEXIS 579 (2004), writ of certiorari denied by 543 U.S. 1188, 125 S. Ct. 1425, 161 L. Ed. 2d 191, 2005 U.S. LEXIS 2103, 73 U.S.L.W. 3513 (2005).

Government was entitled, in murder prosecution arising from drive-by shooting, to call driver of getaway as a witness, even though government could reasonably expect that driver would testify contrary to earlier statement in which he identified defendants as the two gunmen; in such a situation, impeachment with prior statement was permissible and proper. *Johnson v. United States*, 820 A.2d 551, 2003 D.C. App. LEXIS 153 (2003), writ of certiorari denied by 541 U.S. 980, 124 S. Ct. 1895, 158 L. Ed. 2d 481, 2004 U.S. LEXIS 2684, 72 U.S.L.W. 3633 (2004).

Fact that co-defendant had made statement at his plea proceeding that was inconsistent with defendant's innocence was insufficient to overcome defendant's right to call co-defendant to testify; the prior statement could have been used to impeach co-defendant if his trial testimony was inconsistent, and it was for the factfinder to assess the co-defendant's credibility based upon his testimony and any impeaching evidence. *Smith v. United States*, 809 A.2d 1216, 2002 D.C. App. LEXIS 606 (2002).

Claim of surprise, for purposes of statute governing party's right to impeach its own witness, is not defeated simply because witness was reluctant to testify. D.C. Code 1981, § 14-102. *Byers v. United States*, 649 A.2d 279, 1994 D.C. App. LEXIS 190 (1994).

Prior statements by witness who has taken party by surprise and has affirmatively damaged its case can be used for impeachment purposes only to neutralize affirmative harm to party, and not to supply anticipated testimony. D.C. Code 1981, § 14-102. *Waldron v. United States*, 613 A.2d 370, 1992 D.C. App. LEXIS 250 (1992).

Witness did not damage government's case with her surprise testimony that she did not know whether victim or defendant fired first, and thus witness' past statement to prosecutor that defendant was aggressor was not admissible to impeach witness. D.C. Code 1981, § 14-102. *Waldron v. United States*, 613 A.2d 370, 1992 D.C. App. LEXIS 250 (1992).

The failure of witness to give certain anticipated testimony is not "affirmative harm," so as to allow party to impeach its own witness with prior statements, even when the testimony is essential to the party's case. D.C. Code 1981, § 14-102. *Waldron v. United States*, 613 A.2d 370, 1992 D.C. App. LEXIS 250 (1992).

Statute permitting impeachment of own witness allows impeachment by inconsistent statement only if party has been taken by surprise by testimony of witness, and can demonstrate affirmative damage to its case as well. D.C. Code 1981, § 14-102. *In re D.A.*, 597 A.2d 1331, 1991 D.C. App. LEXIS 291 (1991).

Although prosecution was justified in claiming surprise when witnesses in murder prosecution who had previously identified defendant as one of two gunmen who shot victim gave inconsistent testimony at trial, prosecution's case was not affirmatively damaged by such testimony, so as to permit impeachment of witnesses with prior inconsistent statements; witness' prior testimony was crucial to government's case only if other eyewitnesses were not credible. D.C. Code 1981, § 14-102. *In re D.A.*, 597 A.2d 1331, 1991 D.C. App. LEXIS 291 (1991).

Party can impeach its own witness with prior inconsistent statement only if party has been taken by surprise by the testimony of the witness and can demonstrate affirmative damage to its case, and such statements can be used only to neutralize affirmative harm, and not to supply the anticipated testimony. D.C. Code 1981, § 14-102. *Jefferson v. United States*, 558 A.2d 298, 1989 D.C. App. LEXIS 69 (1989), writ of certiorari denied by 493 U.S. 1032, 110 S. Ct. 748, 107 L. Ed. 2d 765, 1990 U.S. LEXIS 294, 58 U.S.L.W. 3428 (1990).

Fact that statute involving impeachment of one's own witness with a prior inconsistent

statement permits impeachment where witness has made a statement to a party or his attorney that is substantially variant from his sworn testimony about material facts in the case does not change the standard that a party can impeach its own witness with a prior inconsistent statement only if the party has been taken by surprise by the testimony of the witness and can demonstrate affirmative damage to its case. D.C. Code 1981, § 14-102. *Jefferson v. United States*, 558 A.2d 298, 1989 D.C. App. LEXIS 69 (1989), writ of certiorari denied by 493 U.S. 1032, 110 S. Ct. 748, 107 L. Ed. 2d 765, 1990 U.S. LEXIS 294, 58 U.S.L.W. 3428 (1990).

Government could impeach its own witness in prosecution for assault with intent to kill while armed with her prior inconsistent grand jury statements identifying defendant as assailant, as it had been taken by surprise by witness' recantation of her previous sworn testimony. D.C. Code 1981, §§ 22-501, 22-3202. *Price v. United States*, 545 A.2d 1219, 1988 D.C. App. LEXIS 106 (1988).

When testimony of a party's own witness surprises that party, counsel may introduce witness' prior inconsistent statements to impeach credibility of that witness, but statements are admissible only to evaluate witness' present truthfulness, and may not be used as substantive evidence of truth of matter asserted in statements. D.C. Code 1981, § 14-102. *Gordon v. United States*, 466 A.2d 1226, 1983 D.C. App. LEXIS 473 (1983).

Government's eliciting on direct examination of its witnesses that they had made statements inconsistent with their trial testimony did not constitute impeachment, where the Government's purpose in eliciting the inconsistent statements was to "take the sting out" of anticipated impeachment of the witnesses by the defense. D.C. Code 1981, § 14-102. *Reed v. United States*, 452 A.2d 1173, 1982 D.C. App. LEXIS 480 (1982), writ of certiorari denied by 464 U.S. 839, 104 S. Ct. 132, 78 L. Ed. 2d 127, 1983 U.S. LEXIS 1372, 52 U.S.L.W. 3264 (1983).

Prior statements of party's own witness are admissible only as proof that witness is unbelievable and they cannot be received as substantive evidence and sole reason such impeachment is permitted is to cancel or neutralize any damaging effect of surprise testimony. *Scott v. United States*, 412 A.2d 364, 1980 D.C. App. LEXIS 251 (1980).

In statutory rape prosecution, prior inconsistent statements of witness were not admissible where they would not impeach prosecution witness' testimony, but would only supply evidence that Government was unable to introduce what it expected to elicit from witness. *Scott v.*

United States, 412 A.2d 364, 1980 D.C. App. LEXIS 251 (1980).

Absent surprise, prosecution could not impeach its own witness by use of prior inconsistent statements. *Scott v. United States*, 412 A.2d 364, 1980 D.C. App. LEXIS 251 (1980).

It could not be said on basis of record in second-degree murder prosecution that there was no rational basis for claim of surprise on part of prosecution with respect to testimony of prosecution witness who changed his testimony at trial from that given before grand jury; witness had previously testified under oath and it had to be presumed that he knew significance of oath and furthermore, although he reportedly may have given different version of event when subsequently interviewed prior to trial with accused present and engendering fear in him, that fact alone did not preclude valid claim of surprise. D.C. Code § 14-102. *Parker v. United States*, 363 A.2d 975, 1976 D.C. App. LEXIS 377 (1976).

In prosecution for sodomy, taking indecent liberties with a minor and assault with a deadly weapon, questioning of complainant as to, inter alia, "Why is it that the first time you said the man tried to do it and later you said that he did do it" did not constitute "impeachment", for purposes of statute permitting party to impeach its own witness only if party is taken by surprise by witness' testimony, but rather a permissible effort to obtain an "explanation" for established inconsistent statements. D.C. Code §§ 14-102, 22-502, 22-3501(a), 22-3502. *Davis v. United States*, 315 A.2d 157, 1974 D.C. App. LEXIS 364 (1974).

— Written statements or instruments, inconsistent statements.

Permitting prosecutor to read statements of government witnesses in their entirety to jury in course of his use of them for impeachment purposes pursuant to claim of surprise was not abuse of discretion. D.C. Code 1961, § 14-102. *Coleman v. United States*, 371 F.2d 343, 1966 U.S. App. LEXIS 5495 (C.A.D.C. 1966), writ of certiorari denied by 386 U.S. 945, 87 S. Ct. 979, 17 L. Ed. 2d 875, 1967 U.S. LEXIS 2174 (1967).

Trial court did not abuse its discretion when it ruled that defendant would not be permitted to impeach witness with unsworn written confession to murder which witness gave to defense investigators one week before trial, after defendant informed court that in the event witness denied on the stand that he shot victim, defendant would claim surprise, and impeach witness with written confession; defendant did not establish good-faith claim of surprise, considering that witness subsequently recanted written confession in affidavit filed with trial court, and also testified twice before grand jury

and, on each occasion, denied killing victim. D.C. Code 1981, § 14-102. *Yelverton v. United States*, 606 A.2d 181, 1992 D.C. App. LEXIS 96 (1992).

Instructions, generally.

Failure, *sua sponte*, to immediately caution jury as to limited purpose for which statements of government witnesses used for impeachment purposes pursuant to claim of surprise were being received was not abuse of discretion. D.C. Code 1961, § 14-102. *Coleman v. United States*, 371 F.2d 343, 1966 U.S. App. LEXIS 5495 (C.A.D.C. 1966), writ of certiorari denied by 386 U.S. 945, 87 S. Ct. 979, 17 L. Ed. 2d 875, 1967 U.S. LEXIS 2174 (1967).

Statute permitting impeachment of witnesses pursuant to claim of surprise contemplates ruling by trial court which comprehends, in addition to finding of surprise, immediate representation to jury as to purpose for which impeaching statements are being permitted to come in. D.C. Code 1961, § 14-102. *Coleman v. United States*, 371 F.2d 343, 1966 U.S. App. LEXIS 5495 (C.A.D.C. 1966), writ of certiorari denied by 386 U.S. 945, 87 S. Ct. 979, 17 L. Ed. 2d 875, 1967 U.S. LEXIS 2174 (1967).

Trial court was under no duty, in murder prosecution arising from drive-by shooting, to instruct jury to view with "special suspicion" a prior statement by driver of getaway car that identified defendant as one of the two gunmen, where defendant failed to request such an instruction. *Johnson v. United States*, 820 A.2d 551, 2003 D.C. App. LEXIS 153 (2003), writ of certiorari denied by 541 U.S. 980, 124 S. Ct. 1895, 158 L. Ed. 2d 481, 2004 U.S. LEXIS 2684, 72 U.S.L.W. 3633 (2004).

The trial court is required to give an immediate cautionary instruction when a party impeaches his own witness with prior inconsistent statements, stating that the jury may consider the prior statements only in evaluating the witness' credibility. D.C. Code 1981, § 14-102. *Gordon v. United States*, 466 A.2d 1226, 1983 D.C. App. LEXIS 473 (1983).

Sua sponte cautioning instruction is required when a party, surprised by its own witness, impeaches witness with prior inconsistent statement in accordance with statute. D.C. Code § 14-102; D.C. Code SCR, Criminal Rule 52(b). *Johnson v. United States*, 387 A.2d 1084, 1978 D.C. App. LEXIS 469 (1978).

Prior arrests and convictions.

Evidence of one crime is inadmissible to prove disposition to commit crime, from which the jury may infer that the defendant committed the crime charged. *McFarland v. United States*, 821 A.2d 348, 2003 D.C. App. LEXIS 217 (2003).

Evidence that \$774 was found on defendant's person at time of arrest for a single drug sale

only a few minutes earlier was admissible on cocaine distribution charge to complete the story of the crime by proving its immediate context; that amount of money did not inherently reflect a prior bad act and thus was not propensity evidence, defendant was free to offer jury an innocent explanation, and he was also free to request instruction restricting relevance of the money to whether he knowingly and intentionally distributed drugs at time and place charged. *McFarland v. United States*, 821 A.2d 348, 2003 D.C. App. LEXIS 217 (2003).

Arrests are the proper subject of cross-examination of a character witness, not to impeach the credibility of the defendant, if he testifies, but to test the probative value of the witness' testimony. *Di Giovanni v. United States*, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

The trial court enjoys broad discretion to limit or preclude entirely the cross-examination of character witness regarding the defendant's prior convictions. *Di Giovanni v. United States*, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

Character witness properly could be questioned regarding defendant's prior arrest for assault with intent to kill if defendant chose to introduce evidence of his character for peacefulness. *Di Giovanni v. United States*, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

A witness may be cross-examined on a prior bad act that has not resulted in a criminal conviction, and thereby impeached, only where: (1) the examiner has a factual predicate for the question, and (2) the bad act bears directly upon the veracity of the witness in respect to the issues involved in the trial. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

Home purchaser's prior bad act in filing a fraudulent affidavit in support of his motion to proceed in forma pauperis in the action against vendor and real estate agents could be used to impeach purchaser's credibility as a witness; the false affidavit was the factual predicate for the questioning, purchaser's willingness to give false information in affidavit bore directly on his credibility as witness, and the affidavit was related to the litigation against vendor and real estate agents. *Dean v. Garland*, 779 A.2d 911, 2001 D.C. App. LEXIS 189 (2001), writ of certiorari denied by 536 U.S. 924, 122 S. Ct. 2591, 153 L. Ed. 2d 780, 2002 U.S. LEXIS 4497, 70 U.S.L.W. 3774 (2002).

Prior bad act of home purchaser, in overstating in mortgage loan application the amount on deposit in bank account, could be used to impeach purchaser's credibility as a witness in action against vendor and real estate agents; the loan application was the factual predicate for the questioning, purchaser's willingness to give false information in the credit application bore directly on her credibility as witness, and

the prior bad act was related to the transaction underlying the litigation. *Dean v. Garland*, 779 A.2d 911, 2001 D.C. App. LEXIS 189 (2001), writ of certiorari denied by 536 U.S. 924, 122 S. Ct. 2591, 153 L. Ed. 2d 780, 2002 U.S. LEXIS 4497, 70 U.S.L.W. 3774 (2002).

A witness may be impeached by questions concerning prior bad conduct relevant to credibility. *Dean v. Garland*, 779 A.2d 911, 2001 D.C. App. LEXIS 189 (2001), writ of certiorari denied by 536 U.S. 924, 122 S. Ct. 2591, 153 L. Ed. 2d 780, 2002 U.S. LEXIS 4497, 70 U.S.L.W. 3774 (2002).

When the prior bad conduct of a witness does not rise to the level of a criminal conviction, two requirements must be met before such conduct can be used to impeach the credibility of the witness: (1) the examiner must have a factual predicate for the question, and (2) the bad act must bear directly upon the veracity of the witness in respect to the issues involved in the trial. *Dean v. Garland*, 779 A.2d 911, 2001 D.C. App. LEXIS 189 (2001), writ of certiorari denied by 536 U.S. 924, 122 S. Ct. 2591, 153 L. Ed. 2d 780, 2002 U.S. LEXIS 4497, 70 U.S.L.W. 3774 (2002).

Prosecutor had good faith belief he could establish prior convictions for felony carrying a dangerous weapons (CDW), as factual predicate for impeaching defendant on cross-examination in prosecution for assault with dangerous weapon by asking about prior convictions, where prosecutor had based his questions on Pretrial Services Agency report indicating that defendant had two prior felony CDW convictions, though in fact defendant had been previously convicted of carrying a pistol without a license, unregistered firearm, and unlawful possession of ammunition. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

A defendant's juvenile adjudications may not be used for impeachment of a defendant's character witness. D.C. Code 1981, §§ 16-2316(e), 16-2331, 16-2335. *McAdoo v. United States*, 515 A.2d 412, 1986 D.C. App. LEXIS 432 (1986).

For the narrow evidentiary purpose of impeachment, individual's commitment for study under the Youth Corrections Act could be used for impeachment purposes. 18 U.S.C. (1982 Ed.) § 5010(e); D.C. Code 1981, § 14-305. *Stewart v. United States*, 490 A.2d 619, 1985 D.C. App. LEXIS 342 (1985).

Purpose of allowing defense to bring out criminal convictions of its own witnesses on direct examination was to defuse, not foreclose, prosecution's impeachment of such witnesses, and thus, prosecution's cross-examination of defense witness as to his prior criminal convictions was proper, notwithstanding that defense witness had stated nature and dates of convictions

on direct. *Beale v. United States*, 465 A.2d 796, 1983 D.C. App. LEXIS 411 (1983), writ of certiorari denied by 465 U.S. 1030, 104 S. Ct. 1293, 79 L. Ed. 2d 694, 1984 U.S. LEXIS 1150, 52 U.S.L.W. 3611 (1984).

Defendant was not entitled to impeach Government witness' credibility with prior arrests. *Reed v. United States*, 452 A.2d 1173, 1982 D.C. App. LEXIS 480 (1982), writ of certiorari denied by 464 U.S. 839, 104 S. Ct. 132, 78 L. Ed. 2d 127, 1983 U.S. LEXIS 1372, 52 U.S.L.W. 3264 (1983).

Prior consistent statements.

Hearsay testimony from friend of witness, regarding whether witness told friend that defendants were the individuals who kidnapped victim, was not admissible under the prior consistent statement exception to the hearsay rule; when witness testified for the prosecution he identified defendants as the men who abducted victim, but when he described the abduction to his friend the night it occurred he stated that he had never seen the men who abducted victim before and did not know them. *Randolph v. United States*, 882 A.2d 210, 2005 D.C. App. LEXIS 464 (2005).

Prior consistent statements may be admitted to rehabilitate a witness in at least two exceptional situations, namely, (1) where the witness has been impeached with a portion of a statement and the rest of the statement contains relevant information that could be used to meet the force of the impeachment, and (2) where there is a charge of recent fabrication. *Jacobs v. United States*, 861 A.2d 15, 2004 D.C. App. LEXIS 582 (2004), vacated by 886 A.2d 510, 2005 D.C. App. LEXIS 545 (D.C. 2005).

The rule barring the introduction of prior consistent statements is designed to prevent the jury from learning that a witness has given the same account out of court that he or she gave on the stand. *Jacobs v. United States*, 861 A.2d 15, 2004 D.C. App. LEXIS 582 (2004), vacated by 886 A.2d 510, 2005 D.C. App. LEXIS 545 (D.C. 2005).

The trial court's allowing of the prosecutor's questions to witnesses, which drew the attention of the witnesses to their prior trial testimony, was not an abuse of discretion; the prosecutor's questions did not result in improper bolstering or the admission of prior consistent statements since the prosecutor was not relying on out of court statements made by the witnesses. *Jacobs v. United States*, 861 A.2d 15, 2004 D.C. App. LEXIS 582 (2004), vacated by 886 A.2d 510, 2005 D.C. App. LEXIS 545 (D.C. 2005).

Trial court has broad discretion to permit party to introduce witness's prior consistent statements to rebut suggestion of recent fabrication by witness, if prior statements were made at a time when, considering all circum-

stances, witness did not have motive to fabricate. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Impeachment of witness with his or her prior inconsistent statements does not open door to introduction of any and all prior consistent statements that witness may have made; repetition does not imply veracity. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Officers' prior consistent statements before grand jury were admissible to rebut suggestion, on cross-examination, of recent fabrication by officers about defendant's remarks on night of victim's death. *Rowland v. United States*, 840 A.2d 664, 2004 D.C. App. LEXIS 7 (2004).

Exclusion of prior consistent statements is intended to avoid the prejudice of unfairly bolstering the witness' credibility. *Porter v. United States*, 826 A.2d 398, 2003 D.C. App. LEXIS 421 (2003).

Cross-examination of complainant is allowed on similar prior allegations if they were fabricated; since Constitution does not require confrontation of witnesses with irrelevant evidence, the very applicability of Confrontation Clause depends on falsity of complainant's prior allegations being false, and cross-examination is required constitutionally only where the prior allegations are shown convincingly to be false. *Velasquez v. United States*, 801 A.2d 72, 2002 D.C. App. LEXIS 314 (2002), US Supreme Court certiorari denied by 537 U.S. 963, 123 S. Ct. 396, 154 L. Ed. 2d 319, 2002 U.S. LEXIS 7514, 71 U.S.L.W. 3265 (2002).

Where, during cross-examination of identification witness, defendant implied that only minutes earlier witness could not identify defendant and that his sudden inability to do so suggested certain fabrication, trial court did not abuse its discretion in permitting mother of witness to rehabilitate her son's credibility with prior consistent statement. *Yelverton v. United States*, 606 A.2d 181, 1992 D.C. App. LEXIS 96 (1992).

Trial court properly allowed Government to rehabilitate prosecution witness by introducing his prior consistent grand jury testimony, where defense counsel had tried to suggest on cross-examination that witness' trial testimony was fabricated. *Mitchell v. United States*, 569 A.2d 177, 1990 D.C. App. LEXIS 14 (1990), writ of certiorari denied by 498 U.S. 986, 111 S. Ct. 521, 112 L. Ed. 2d 532, 1990 U.S. LEXIS 5983, 59 U.S.L.W. 3391 (1990).

Witness' prior consistent statements may be introduced to rehabilitate, where the witness has been impeached with a portion of a statement and the rest of the statement contains relevant information that could be used to meet the force of the impeachment, and where there is a charge of recent fabrication. *Reed v. United States*, 452 A.2d 1173, 1982 D.C. App. LEXIS

480 (1982), writ of certiorari denied by 464 U.S. 839, 104 S. Ct. 132, 78 L. Ed. 2d 127, 1983 U.S. LEXIS 1372, 52 U.S.L.W. 3264 (1983).

In order for a witness' prior consistent statement to be admissible on the basis that it rebuts a charge of recent fabrication, the prior statement must have been made at a time when the witness did not have a motive to fabricate. *Reed v. United States*, 452 A.2d 1173, 1982 D.C. App. LEXIS 480 (1982), writ of certiorari denied by 464 U.S. 839, 104 S. Ct. 132, 78 L. Ed. 2d 127, 1983 U.S. LEXIS 1372, 52 U.S.L.W. 3264 (1983).

While Government was free to elicit witnesses' prior inconsistent statements on direct examination for tactical reasons, it was not free to use the inconsistent statements as the basis for the introduction of prior consistent statements on direct examination. *Reed v. United States*, 452 A.2d 1173, 1982 D.C. App. LEXIS 480 (1982), writ of certiorari denied by 464 U.S. 839, 104 S. Ct. 132, 78 L. Ed. 2d 127, 1983 U.S. LEXIS 1372, 52 U.S.L.W. 3264 (1983).

Prior consistent statements may not be used to bolster an unimpeached witness. *Reed v. United States*, 452 A.2d 1173, 1982 D.C. App. LEXIS 480 (1982), writ of certiorari denied by 464 U.S. 839, 104 S. Ct. 132, 78 L. Ed. 2d 127, 1983 U.S. LEXIS 1372, 52 U.S.L.W. 3264 (1983).

Prohibition against bolstering one's own witness with his prior consistent statements cannot be circumvented by first eliciting the witness' inconsistent statement and then "rehabilitating" the witness with a prior consistent statement. *Reed v. United States*, 452 A.2d 1173, 1982 D.C. App. LEXIS 480 (1982), writ of certiorari denied by 464 U.S. 839, 104 S. Ct. 132, 78 L. Ed. 2d 127, 1983 U.S. LEXIS 1372, 52 U.S.L.W. 3264 (1983).

Generally, prior statements consistent with a witness' trial testimony are inadmissible on the theory that mere repetition does not imply veracity. *Reed v. United States*, 452 A.2d 1173, 1982 D.C. App. LEXIS 480 (1982), writ of certiorari denied by 464 U.S. 839, 104 S. Ct. 132, 78 L. Ed. 2d 127, 1983 U.S. LEXIS 1372, 52 U.S.L.W. 3264 (1983).

Prior consistent statements of female child victim of sexual assault were not admissible as corroboration. *Scott v. United States*, 412 A.2d 364, 1980 D.C. App. LEXIS 251 (1980).

Absent exceptional circumstances, prior consistent statements made by a statutory rape victim were not admissible to rehabilitate witness after she had been impeached by defense. *Scott v. United States*, 412 A.2d 364, 1980 D.C. App. LEXIS 251 (1980).

Prior identification.

Witness's statement to police on night of shooting that defendant shot victim was admissible under prior identification exception to rule

against hearsay, in murder prosecution, as the statement identified defendant as the shooter, and witness, as the declarant, was available for cross-examination. *Graham v. United States*, 12 A.3d 1159, 2011 D.C. App. LEXIS 30 (2011), writ of certiorari denied by 132 S. Ct. 363, 181 L. Ed. 2d 230, 2011 U.S. LEXIS 6849, 80 U.S.L.W. 3191 (U.S. 2011).

Court of Appeals would decline to reach on defendant's appeal of his murder conviction issue of whether witness's statement to police on night of shooting identifying defendant as the shooter had a sufficient foundation to be admitted as a prior statement of identification, as defendant failed to address the requisite basis or foundation of a statement of identification in his appeal, instead characterizing witness's statement as a prior consistent statement. *Graham v. United States*, 12 A.3d 1159, 2011 D.C. App. LEXIS 30 (2011), writ of certiorari denied by 132 S. Ct. 363, 181 L. Ed. 2d 230, 2011 U.S. LEXIS 6849, 80 U.S.L.W. 3191 (U.S. 2011).

Child sexual abuse victim adopted videotape of her interview at the child advocacy center (CAC), and thus the tape was admissible as substantive evidence, during prosecution for first-degree child sexual abuse; victim signed or initialed the tape while under oath before the grand jury, and she generally affirmed the contents of the tape and confirmed numerous specific facts stated therein. *Koonce v. United States*, 993 A.2d 544, 2010 D.C. App. LEXIS 200 (2010).

Grand jury testimony by defendant's sister, which she disavowed at trial, that she saw defendant with a firearm four days after murder was admissible as substantive evidence to show defendant's possession of what reasonably could have been the murder weapon soon after fatal shooting. *Thomas v. United States*, 978 A.2d 1211, 2009 D.C. App. LEXIS 360 (2009), writ of certiorari denied by 131 S. Ct. 282, 178 L. Ed. 2d 185, 2010 U.S. LEXIS 6856, 79 U.S.L.W. 3203 (U.S. 2010), writ of certiorari denied by 131 S. Ct. 196, 178 L. Ed. 2d 118, 2010 U.S. LEXIS 6815, 79 U.S.L.W. 3200 (U.S. 2010).

In cases involving alleged prior identifications, as in other cases, decisions as to the admissibility of evidence generally are left to the sound discretion of the trial judge. *Randolph v. United States*, 882 A.2d 210, 2005 D.C. App. LEXIS 464 (2005).

Hearsay testimony from friend of witness, regarding whether witness told friend that defendants were the individuals who kidnapped victim, was not admissible under the prior identification exception to the hearsay rule; friend of witness testified that witness never described the victim's abductors as anything other than two "dudes" or "guys," and witness provided no information on the abductors such

as their race, height, weight, or physical characteristics. *Randolph v. United States*, 882 A.2d 210, 2005 D.C. App. LEXIS 464 (2005).

Under the prior-identification exception to the hearsay rule, out-of-court descriptions or identifications are admissible as long as the identifying witness is available for cross-examination and the statements do not constitute a detailed account of the actual crime. *Brown v. United States*, 881 A.2d 586, 2005 D.C. App. LEXIS 457 (2005).

An identification that is part of an out-of-court statement but does not satisfy statute allowing such identifications to be admissible when the declarant testifies at trial and is available for cross-examination is hearsay, may be admissible nonetheless under an exception to the hearsay rule. *Hallums v. United States*, 841 A.2d 1270, 2004 D.C. App. LEXIS 48 (2004).

Evidence of prior out-of-court identification is admissible through the testimony of identifier or witnesses present at prior identification. *Johnson v. United States*, 820 A.2d 551, 2003 D.C. App. LEXIS 153 (2003), writ of certiorari denied by 541 U.S. 980, 124 S. Ct. 1895, 158 L. Ed. 2d 481, 2004 U.S. LEXIS 2684, 72 U.S.L.W. 3633 (2004).

Evidence of eyewitness' prior out-of-court statement identifying defendants as the two gunmen in drive-by shooting was admissible without limitation, in murder prosecution arising from that incident in which that eyewitness testified, to prove gunmen's identities. *Johnson v. United States*, 820 A.2d 551, 2003 D.C. App. LEXIS 153 (2003), writ of certiorari denied by 541 U.S. 980, 124 S. Ct. 1895, 158 L. Ed. 2d 481, 2004 U.S. LEXIS 2684, 72 U.S.L.W. 3633 (2004).

Virtually entire prior statement by driver of getaway car, portions of which identified defendants as the gunmen in drive-by shooting, was admissible in murder prosecution arising from that incident in which driver testified; context was necessary in order for the identifications to be probative, and driver's entire description of the circumstances was relevant to the identification. *Johnson v. United States*, 820 A.2d 551, 2003 D.C. App. LEXIS 153 (2003), writ of certiorari denied by 541 U.S. 980, 124 S. Ct. 1895, 158 L. Ed. 2d 481, 2004 U.S. LEXIS 2684, 72 U.S.L.W. 3633 (2004).

Remand.

Affidavit and pleading asserting that government avoided its own witness before trial in order to be able to claim surprise and thereby to impeach such witness required remand for supplementation by findings and conclusions by district court after evidentiary hearing on post-trial motion for new trial on ground of newly discovered evidence. D.C. Code § 14-102.

Brown v. United States, 411 F.2d 716, 1969 U.S. App. LEXIS 12584 (C.A.D.C. 1969).

Review.

— Admission of evidence, review.

Grand jury testimony of state's witness inculcating murder defendants was properly admitted at trial as substantive evidence, as well as to impeach witness, who claimed to be unable to remember events at issue, pursuant to statute providing that a statement is not hearsay if declarant testifies at trial and is subject to cross-examination concerning the statement and the statement is inconsistent with declarant's testimony, and was given under oath subject to penalty of perjury at a trial, hearing, or other proceeding, as witness testified at defendants' trial and was available for cross-examination about his prior grand jury testimony, which was under oath, and that testimony was inconsistent with his claimed memory loss at trial. *Diggs v. United States*, 28 A.3d 585, 2011 D.C. App. LEXIS 554 (2011), writ of certiorari denied by 133 S. Ct. 334, 184 L. Ed. 2d 198, 2012 U.S. LEXIS 7354, 81 U.S.L.W. 3168 (U.S. 2012).

Accident report prepared by employee of general contractor was not admissible to show prior consistent statements to rebut theory that construction worker had fabricated his story about a workplace injury for purposes of negligence action against consultant that was hired by owner of building to oversee construction site, where neither the report, nor any of the alleged statements upon which the report was based, was a prior consistent statement made by construction worker. *Presley v. Commer. Moving & Rigging, Inc.*, 25 A.3d 873, 2011 D.C. App. LEXIS 437 (2011).

Even assuming defendant had right, under Confrontation Clause, to recross-examine government witness about witness' prior consistent statements admitted as nonhearsay substantive evidence after, rather than during, government's redirect examination, any error was harmless, in prosecution for second-degree murder; jury must have been aware from counsel's argument that the defense considered witness' first statement to police to be truthful and all other statements and testimony, including the prior consistent statements in witness' second statement to police, to be unreliable, and reasonable fact-finder could have found government's proof of guilt, which included electrical cord wrapped around victim's throat and findings by fire department that an arson and homicide occurred, to be compelling. *Tyer v. United States*, 912 A.2d 1150, 2006 D.C. App. LEXIS 642 (2006).

Any possible error in allowing prosecutor to impeach defendant's grandmother with evidence regarding her failure to provide alibi

information to authorities at defendant's pre-trial detention hearing did not substantially sway jury's guilty verdict, in trial for armed carjacking and related crimes, in view of substantial evidence of defendant's guilt, victim's positive identification of defendant as one of perpetrators, grandmother gave alibi information promptly to defense counsel, and other alibi witness' testimony indicated that witnesses were not recounting what happened on evening in question. *Matthews v. United States*, 892 A.2d 1100, 2006 D.C. App. LEXIS 10 (2006).

Record was insufficient to determine whether any corroborating circumstances indicated trustworthiness of witness's oral jailhouse confession to defendant's attorney, for purposes of determining whether confession was admissible under hearsay exception for statements against penal interest, and thus, remand was warranted. *Ingram v. United States*, 885 A.2d 257, 2005 D.C. App. LEXIS 533 (2005).

Trial court's error in allowing government to question defense witness concerning his bias toward victim in murder prosecution, which was based on claim that witness's friend had been previously killed in front of victim's home, was harmless; although prosecutor expressed skepticism that witness did not know the location where his friend was shot, there was no further mention of shooting of witness's friend or attempt to show witness's bias during trial. *Joyner v. United States*, 818 A.2d 166, 2003 D.C. App. LEXIS 133 (2003), writ of certiorari denied by 541 U.S. 1005, 124 S. Ct. 2058, 158 L. Ed. 2d 521, 2004 U.S. LEXIS 3000, 72 U.S.L.W. 3658 (2004).

Admission of audio recording of assault victim's grand jury testimony to impeach the victim, with redactions only of objectionable material and prior consistent statements, was not an abuse of discretion in prosecution for assault with intent to kill while armed; playing the tape line-by-line would have been difficult technically, victim was unable to read the transcript and refused to listen to the recording, and his claim that he had been "forced" to give the grand jury testimony made the context of the prior inconsistent statements relevant. *McConnaughey v. United States*, 804 A.2d 334, 2002 D.C. App. LEXIS 436 (2002).

Allowing prosecution to introduce, on rebuttal, certification of defendant's prior convictions for carrying a pistol without a license (CPWL), unregistered firearm, and unlawful possession of ammunition, was not plain error in prosecution for assault with dangerous weapon, though prosecutor's impeachment of defendant on cross-examination had been based on the factual predicate of prior convictions for felony carrying a dangerous weapons (CDW), because CDW was closely related to CPWL. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App.

LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Admission of testimony by a police officer based on prior inconsistent statements of a Government witness to a grand jury concerning placement of suspects and their automobile at scene of armed robbery, given strength of Government's case apart from such evidence, prosecutor's avoidance of evidence when she realized it lacked a foundation, trial court's instructions to disregard evidence, and jury's apparent readiness to limit its use of evidence to an appropriate purpose, did not so affect defendant's substantial rights as to require reversal. D.C. Code 1981, § 14-102. *Gordon v. United States*, 466 A.2d 1226, 1983 D.C. App. LEXIS 473 (1983).

— Examination of witnesses, review.

Trial court's failure to curtail sua sponte prosecutor's elicitation from detective of details of out-of-court statements of state's witness to detective identifying murder defendants as the persons who had confessed their commission of the murder directly to witness other than the identification itself during re-direct examination, which details might very well have exceeded the limits of the prior identification exception to rule against hearsay, did not constitute plain error, particularly where defendant's cross-examination of detective arguably had opened the door to the admission of further details, and where prejudice was less likely because those details had been adduced earlier in the trial through witness's grand jury testimony. *Diggs v. United States*, 28 A.3d 585, 2011 D.C. App. LEXIS 554 (2011), writ of certiorari denied by 133 S. Ct. 334, 184 L. Ed. 2d 198, 2012 U.S. LEXIS 7354, 81 U.S.L.W. 3168 (U.S. 2012).

Out-of-court statements of state's witness to detective identifying murder defendants as the persons who had confessed their commission of the murder directly to witness were admissible at trial pursuant to prior identification exception to rule against hearsay, as witness was available at trial for cross-examination concerning his statements, and witness knew or had a relationship with defendants prior to the perceived event. *Diggs v. United States*, 28 A.3d 585, 2011 D.C. App. LEXIS 554 (2011), writ of certiorari denied by 133 S. Ct. 334, 184 L. Ed. 2d 198, 2012 U.S. LEXIS 7354, 81 U.S.L.W. 3168 (U.S. 2012).

Any error of trial court by admitting statement four-year old witness to victim's murder made to detective the day after the murder, identifying defendant as the murderer, was not plain error, in prosecution of defendant that resulted in a conviction for second-degree murder, as the witness testified at trial, was avail-

able for cross-examination, and, though witness at trial did not recall his statements to detective, witness identified defendant as the killer at trial. *Melendez v. United States*, 26 A.3d 234, 2011 D.C. App. LEXIS 106 (2011).

Government's redirect examination of government witness did not raise any new issues and instead merely expanded on issues already raised, during defense counsel's cross-examination, regarding prosecutor allegedly pressuring witness to incriminate defendant, and thus, defendant was not entitled under Confrontation Clause to recross-examine the witness about witness' prior consistent statements admitted as nonhearsay substantive evidence after, rather than during, redirect examination. *Tyer v. United States*, 912 A.2d 1150, 2006 D.C. App. LEXIS 642 (2006).

Despite witness' repudiation of her grand jury testimony relating defendant's inculpatory statement, defendant had opportunity to cross-examine witness, as required, under Confrontation Clause and statute governing impeachment of witnesses, for admission of witness' grand jury testimony, where government had granted witness immunity, even though counsel decided not to cross-examine her, apparently for tactical reasons. *Hartridge v. United States*, 896 A.2d 198, 2006 D.C. App. LEXIS 142 (2006), writ of certiorari denied by 549 U.S. 1272, 127 S. Ct. 1503, 167 L. Ed. 2d 242, 2007 U.S. LEXIS 2963, 75 U.S.L.W. 3473 (2007).

Once the alibi witness has furnished her exculpatory information to defense counsel, it arguably can no longer be maintained that her normal and natural course of conduct would have been to go to the authorities with her alibi information, in order to allow impeachment of the witness for her failure to provide alibi or exculpatory information to authorities, and where that is so, it is incumbent on the trial court to consider carefully on the record before it whether the line of questioning at issue is sufficiently probative to justify in the face of objection its use in determining the witness' credibility. *Matthews v. United States*, 892 A.2d 1100, 2006 D.C. App. LEXIS 10 (2006).

An appellate court reviews a trial court's rulings placing limitations on cross-examination for an abuse of discretion. *Bennett v. United States*, 876 A.2d 623, 2005 D.C. App. LEXIS 266 (2005), writ of certiorari denied by 546 U.S. 1123, 126 S. Ct. 1134, 163 L. Ed. 2d 914, 2006 U.S. LEXIS 460 (2006).

A trial judge may not prohibit all cross-examination of a witness about an event that a jury might reasonably have found caused bias. *Blunt v. United States*, 863 A.2d 828, 2004 D.C. App. LEXIS 683 (2004).

Because of the central role cross-examination for bias plays, the court must accord such cross-examination wide latitude and must not

unduly restrict it. *Blunt v. United States*, 863 A.2d 828, 2004 D.C. App. LEXIS 683 (2004).

Bias cross-examination of a main government witness is always a proper area of cross-examination and is relevant in assessing the witness' credibility and evaluating the weight of the evidence. *Blunt v. United States*, 863 A.2d 828, 2004 D.C. App. LEXIS 683 (2004).

Error was not harmless beyond a reasonable doubt, in prosecution for robbery, as to violation of defendant's right under Confrontation Clause to cross-examine witnesses regarding bias by failing to allow him to conduct any cross-examination of prosecution's key witness regarding criminal charge against witness which had been placed on "stet" docket in Maryland, which meant Maryland prosecutor had not elected to proceed on indictment but could later decide to proceed on it; jury's question to court during deliberations, regarding whether witness could be prosecuted in District of Columbia for participating in the robbery, illustrated jury's concern with witness' veracity and bias, jury acquitted defendant of greater offense of armed robbery, and witness was the only eyewitness to affirmatively identify defendant as the perpetrator. *Blunt v. United States*, 863 A.2d 828, 2004 D.C. App. LEXIS 683 (2004).

Late disclosure of assault victim's statement to police that shooter had worn a mask was not prejudicial to defendant's right to impeach victim or officer to whom statement was made, where trial court allowed defense counsel to cross-examine both victim and officer outside presence of jury and determine whether he wished to recall them for re-cross-examination, and rather than recall them counsel chose to emphasize in closing argument negative implications of discrepancy between officer's testimony and victim's silence on the stand with respect to mask, as well as government's suppression of victim's prior statement. *Moore v. United States*, 846 A.2d 302, 2004 D.C. App. LEXIS 158 (2004).

Even when a defendant is attempting to impeach an accuser with evidence of bias, the trial court may, without violating the Confrontation Clause, impose reasonable limits on such cross-examination, based on concerns about confusion of the issues or interrogation that is repetitive or only marginally relevant. *Brown v. United States*, 840 A.2d 82, 2004 D.C. App. LEXIS 2 (2004).

If the trial court has permitted enough cross-examination on an appropriate issue to satisfy the Sixth Amendment, any limitation on further cross-examination will be reviewed on appeal only for abuse of discretion. *Brown v. United States*, 840 A.2d 82, 2004 D.C. App. LEXIS 2 (2004).

Trial judges retain wide latitude insofar as the Confrontation Clause is concerned to im-

pose reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. *Brown v. United States*, 840 A.2d 82, 2004 D.C. App. LEXIS 2 (2004).

A defendant's right to pursue a particular line of cross-examination is circumscribed by general principles of relevance. *Bruce v. United States*, 820 A.2d 540, 2003 D.C. App. LEXIS 151 (2003).

Trial court abused its discretion in murder prosecution by allowing government to question defense witness concerning his bias toward victim, where only proffer of witness's bias consisted of fact that a friend of witness's had been lovers with victim, and witness's friend had been killed on front steps of victim's home. *Joyner v. United States*, 818 A.2d 166, 2003 D.C. App. LEXIS 133 (2003), writ of certiorari denied by 541 U.S. 1005, 124 S. Ct. 2058, 158 L. Ed. 2d 521, 2004 U.S. LEXIS 3000, 72 U.S.L.W. 3658 (2004).

Trial judge's limitation of cross-examination of witness for prosecution, who identified gun at trial as weapon he had sold to defendant, regarding witness' purported bias, which was alleged to have stemmed from defendant's employment discrimination complaint against witness' superior, was not error in robbery prosecution; proffer of bias was marginal, and thus, inadequate to require judge to permit proposed line of inquiry, and situation before trial judge was rife with potential for confusion of issue and for distraction of jury from question of whether defendant was innocent or guilty. *Coles v. United States*, 808 A.2d 485, 2002 D.C. App. LEXIS 556 (2002), writ of certiorari denied by 540 U.S. 931, 124 S. Ct. 346, 157 L. Ed. 2d 237, 2003 U.S. LEXIS 7207, 72 U.S.L.W. 3245 (2003).

Defendant failed to lay a proper foundation for cross-examination of government witness on whether she had been treated for substance abuse, and thus defendant was not entitled to question witness on the matter, where, upon trial court's sustaining of government's objection, defendant failed to explain the relevance or probative value of the question and its anticipated answer. *Williams v. United States*, 805 A.2d 919, 2002 D.C. App. LEXIS 489 (2002).

A defendant's right to pursue a particular line of cross-examination is circumscribed by general principles of relevance. *Resper v. United States*, 793 A.2d 450, 2002 D.C. App. LEXIS 50 (2002), writ of certiorari denied by 540 U.S. 890, 124 S. Ct. 274, 157 L. Ed. 2d 163, 2003 U.S. LEXIS 6422, 72 U.S.L.W. 3242 (2003).

Prejudicial error may result from limiting a defendant's right to cross-examine a crucial

government witness, especially a witness without whose testimony the government could not prove guilt. *Shorter v. United States*, 792 A.2d 228, 2001 D.C. App. LEXIS 672 (2001).

Trial court's erroneous *ex parte* ruling that prosecution did not need to divulge to defense factual basis for government witness' possible bias, which was that witness' sons were under investigation for sexually abusing two of defendant's children, was not harmless, in prosecution for cruelty to children; witness' testimony as sole adult witness was significant, given that children expressed desire to be reunited with their siblings, there was evidence that children would lie at their mother's request, and children admitted that they had been instructed to testify against defendant in order to be reunited. *McCloud v. United States*, 781 A.2d 744, 2001 D.C. App. LEXIS 206 (2001).

Under harmless error test, it must be clear beyond a reasonable doubt (1) that defendant would have been convicted without the witness' testimony, or (2) that the restricted line of inquiry would not have weakened the impact of the witness' testimony. *McCloud v. United States*, 781 A.2d 744, 2001 D.C. App. LEXIS 206 (2001).

In reviewing the trial court's limitation on cross-examination for abuse of discretion, the Court of Appeals considers whether meaningful cross-examination was precluded by the trial court's rulings. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

Under *Kotteakos*, which is applied to those instances in which the defendant was not wholly deprived of an opportunity to cross-examine a witness, the test for harmless error is whether a reviewing court can say, with fair assurance, after pondering all that happened without stripping the erroneous action from the whole, that the judgment was not substantially swayed by the error. *Villa v. District of Columbia*, 778 A.2d 309, 2001 D.C. App. LEXIS 158 (2001).

Any error in trial court's failure to intervene, *sua sponte*, to prevent prosecutor from impeaching defendant by cross-examining him about his prior convictions, and to prevent prosecutor from arguing in closing and rebuttal that defendant had lied, was harmless, in prosecution for assault with dangerous weapon, where jury heard significant damaging testimony from defendant that he was a drug abuser who had been convicted of drug-related offenses. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Even assuming inadequacy of foundation for impeachment, with prior statements, of prosecution witness who initially testified that she

could not distinguish voice of person who made statement admitting shooting, there was no basis for reversal, as witness adopted prior statements identifying defendant as having made admission and, in any event, impeachment was harmless once witness affirmatively testified that she overheard defendant say he shot victim. D.C. Code 1981, § 14-102. *Byers v. United States*, 649 A.2d 279, 1994 D.C. App. LEXIS 190 (1994).

Neither absence of proper foundation for impeachment of witness with prior inconsistent statement, nor omission of cautionary instruction, is reversible error where witness adopts impeaching evidence. D.C. Code 1981, § 14-102. *Byers v. United States*, 649 A.2d 279, 1994 D.C. App. LEXIS 190 (1994).

There was no abuse of discretion requiring reversal as to homicide defendant's claim that government's impeachment of witness with her prior inconsistent testimony exceeded scope of proper impeachment; following her testimony that defendant said he did not do it, witness denied hearing defendant implicitly threaten potential witnesses, and subject of that testimony, to which defendant did not object, was within scope of valid impeachment. *Byers v. United States*, 649 A.2d 279, 1994 D.C. App. LEXIS 190 (1994).

Defendant was prejudiced by trial court's erroneous acceptance of claim of surprise as to government witness' testimony, allowing government to impeach its own witness; impeaching evidence that defendant fired first seriously damaged defendant's claim of self-defense. D.C. Code 1981, § 14-102. *Waldron v. United States*, 613 A.2d 370, 1992 D.C. App. LEXIS 250 (1992).

Prosecutor's impeachment of its own witness with prior inconsistent statement that she saw defendant and victim shooting at each other was harmless error, though witness' testimony did not damage government's case as required for impeachment, where other evidence established that shooting had occurred. D.C. Code 1981, § 14-102. *Waldron v. United States*, 613 A.2d 370, 1992 D.C. App. LEXIS 250 (1992).

Error arising when prosecutor was permitted to impeach its own witnesses with prior inconsistent statements in prosecution for first-degree murder while armed was harmless, where testimony of other prosecution witnesses, if believed, established that defendant was armed and shot victim. D.C. Code 1981, §§ 6-2361, 14-102, 22-2401, 22-3202, 22-3204. In re D.A., 597 A.2d 1331, 1991 D.C. App. LEXIS 291 (1991).

Assuming that trial judge abused his discretion by permitting the Government to impeach its own witness in attempted robbery case, with prior inconsistent statement that witness saw assailants putting on masks, the error was harmless where the victims knew their assail-

ants, the victims' identification testimony was corroborated by the witness' unimpeached testimony, and nothing in the record suggested that the jury did not follow the instructions on the limited use that it could make of the witness' prior statement. D.C. Code 1981, § 14-102. *Jefferson v. United States*, 558 A.2d 298, 1989 D.C. App. LEXIS 69 (1989), writ of certiorari denied by 493 U.S. 1032, 110 S. Ct. 748, 107 L. Ed. 2d 765, 1990 U.S. LEXIS 294, 58 U.S.L.W. 3428 (1990).

After Government had properly called witness because witness was able to corroborate significant aspects of robbery victim's version of robbery, Government's questioning of witness regarding witness' earlier identification of defendant as robbery suspect and showing of videotape of witness viewing lineup which included defendant constituted impermissible impeachment of Government's own witness; moreover, defendant was prejudiced by such tactic where witness' prior statement identifying defendant as robbery suspect bolstered Government's theory that witness and defendant had conversation over telephone that at least facilitated robbery, and where remaining testimony identifying defendant as robber was not overwhelming. *Fletcher v. United States*, 524 A.2d 40, 1987 D.C. App. LEXIS 330 (1987).

— In general.

Interpretation of statute on evidence of an identification made after perceiving a person is a legal question reviewed de novo. *Sparks v. United States*, 755 A.2d 394, 2000 D.C. App. LEXIS 109 (2000).

Trial court is vested with broad discretion in determining propriety of impeachment under code section allowing party to impeach its own witness with prior inconsistent statements if good faith claim of surprise is made and affirmative damage to case results from testimony, and unless court's ruling has no rational basis, its finding of surprise will not be disturbed. D.C. Code 1981, § 14-102. *Byers v. United States*, 649 A.2d 279, 1994 D.C. App. LEXIS 190 (1994).

Manner of impeachment of witness under statute governing party's right to impeach its own witness is within trial court's discretion and will not be disturbed absent abuse. D.C. Code 1981, § 14-102. *Byers v. United States*, 649 A.2d 279, 1994 D.C. App. LEXIS 190 (1994).

Trial court's exercise of its broad discretion in determining whether party can impeach its own witness will be disturbed on appeal only if ruling is without rational basis. *Hawkins v. United States*, 606 A.2d 753, 1992 D.C. App. LEXIS 93 (1992).

On appeal, Court of Appeals may only disturb trial court's finding of surprise, so as to warrant impeachment of party's own witness with prior

inconsistent statement, if ruling is without any rational basis. D.C. Code 1981, § 14-102. In re D.A., 597 A.2d 1331, 1991 D.C. App. LEXIS 291 (1991).

Statute allowing party to impeach his own witnesses after surprise testimony vests broad discretion in trial court; Court of Appeals may only disturb the trial court's finding of surprise if ruling is without any rational basis. D.C. Code 1981, § 14-102. *Stewart v. United States*, 490 A.2d 619, 1985 D.C. App. LEXIS 342 (1985).

Addressing appellate process, standard to be used with respect to claim of surprise, for purpose of impeaching one's own witness, is that trial court's ruling on surprise may not be disturbed unless it plainly appears that ruling was without any rational basis. D.C. Code § 14-102. *Parker v. United States*, 363 A.2d 975, 1976 D.C. App. LEXIS 377 (1976).

— Instructions, review.

Assuming that prior statement by witness called by prosecutor as a hostile witness, to the effect that witness had been threatened by defendant, was properly admitted despite absence of surprise on the part of the prosecutor, the trial court committed error in failing to give an immediate cautionary instruction regarding the limited, impeachment, purpose for which the evidence could be used, and such error was not harmless where court also failed to give such an instruction in its charge to the jury and where the prosecutor argued that the matters in the statement revealed a consciousness of guilt on the part of defendant and should be taken as fact. D.C. Code § 14-102. *United States v. Gilliam*, 484 F.2d 1093, 1973 U.S. App. LEXIS 7941 (C.A.D.C. 1973).

Under statute authorizing party to impeach his witness by prior statements if the party is taken by surprise by the testimony of the witness, trial court is required to give, sua sponte, a cautionary instruction as to the limited purpose for which the evidence of the prior statements can be used, and except in cases of explicit waiver by defense counsel, failure to do so constitutes reversible error. D.C. Code § 14-102. *United States v. Gilliam*, 484 F.2d 1093, 1973 U.S. App. LEXIS 7941 (C.A.D.C. 1973).

It was fundamental error to send case to jury without instructions as to elements of offense which government was required to prove beyond reasonable doubt before verdict of guilty could be returned. *Byrd v. United States*, 342 F.2d 939, 1965 U.S. App. LEXIS 6866 (C.A.D.C. 1965).

Failure to apprise jury of essential elements of offense charged required reversal of robbery conviction, even if, on evidence presented, trial judge could have taken uncontested issues from jury and even if defense counsel, in closing arguments, "agreed" that there was no dispute

over fact that crime had been committed. *Byrd v. United States*, 342 F.2d 939, 1965 U.S. App. LEXIS 6866 (C.A.D.C. 1965).

There was no reasonable likelihood, in murder prosecution in which detective testified that defendant's sister had reported a statement by defendant inculcating himself and jointly tried codefendant, that the omission of an unrequested instruction that detective's testimony was admissible only to impeach sister's trial testimony had a prejudicial effect on outcome of trial, as necessary to constitute plain error; detective's testimony was entirely duplicative of sister's properly admitted grand jury testimony. *Thomas v. United States*, 978 A.2d 1211, 2009 D.C. App. LEXIS 360 (2009), writ of certiorari denied by 131 S. Ct. 282, 178 L. Ed. 2d 185, 2010 U.S. LEXIS 6856, 79 U.S.L.W. 3203 (U.S. 2010), writ of certiorari denied by 131 S. Ct. 196, 178 L. Ed. 2d 118, 2010 U.S. LEXIS 6815, 79 U.S.L.W. 3200 (U.S. 2010).

Even if trial court erred when he instructed jury to consider whether or not victim had adopted videotape excerpts, describing what defendant had done to her, that were used to impeach her courtroom testimony that she did not know what defendant had done to her, defendant was not impermissibly prejudiced; having established that statements were adopted, fact that jury could have reconsidered whether adoption occurred or not only stood to benefit defendant. *Williams v. United States*, 859 A.2d 130, 2004 D.C. App. LEXIS 452 (2004).

Defendants could not, on appeal in murder prosecution arising from drive-by shooting, complain about instruction that erroneously allowed eyewitness' prior out-of-court identification of defendants as the gunmen to be used only to impeach eyewitness' credibility; instruction favored defendants and prejudiced the government. *Johnson v. United States*, 820 A.2d 551, 2003 D.C. App. LEXIS 153 (2003), writ of certiorari denied by 541 U.S. 980, 124 S. Ct. 1895, 158 L. Ed. 2d 481, 2004 U.S. LEXIS 2684, 72 U.S.L.W. 3633 (2004).

Alleged error by trial court, in murder prosecution arising from drive-by shooting, in failing to instruct jury sua sponte to view with "special suspicion" a prior statement by driver of getaway car that identified defendant as one of the gunmen would be reviewed only for plain error, where defendant did not request such an instruction during the trial. *Johnson v. United States*, 820 A.2d 551, 2003 D.C. App. LEXIS 153 (2003), writ of certiorari denied by 541 U.S. 980, 124 S. Ct. 1895, 158 L. Ed. 2d 481, 2004 U.S. LEXIS 2684, 72 U.S.L.W. 3633 (2004).

Failure of trial court to provide immediate, unrequested cautionary instructions on limited admissibility of prior conviction used to impeach testimony of defense witness, defendant's mother, was not plain error; defendant

might have simply made tactical choice not to highlight the conviction with supplemental instructions. *Gilliam v. United States*, 707 A.2d 784, 1998 D.C. App. LEXIS 35 (1998).

Jury verdict was not substantially swayed by trial court's failure to give immediate limiting instruction after prosecution, on claim of surprise, impeached its own principal witness with the witness' grand jury testimony identifying defendant as shooter, and defendant thus was not entitled to reversal; no such instruction was requested, and witness' grand jury testimony was not the only evidence presented by the witness linking defendant to the offense. *Scales v. United States*, 687 A.2d 927, 1996 D.C. App. LEXIS 281 (1996).

Any error in timing of jury instruction on limited use of impeaching evidence regarding prosecution's impeachment of its witness with prior inconsistent statements was harmless in homicide prosecution; trial court instructed jury on use of impeachment evidence several times during course of trial, and even government counsel reminded jury in closing that impeachment evidence could be used only in assessing witness' credibility. D.C. Code 1981, § 14-102. *Byers v. United States*, 649 A.2d 279, 1994 D.C. App. LEXIS 190 (1994).

Any error in timing of limiting instruction regarding testimony of impeaching witness was harmless in homicide prosecution. *Byers v. United States*, 649 A.2d 279, 1994 D.C. App. LEXIS 190 (1994).

Any error in timing of cautionary instruction regarding government's impeachment of its own witness following surprise testimony was cured, as instruction was given close to time of impeachment, i.e., on morning following end of day when impeachment occurred. D.C. Code 1981, § 14-102. *Byers v. United States*, 649 A.2d 279, 1994 D.C. App. LEXIS 190 (1994).

Although cautionary instruction is required when party, surprised by its own witness, impeaches witness with prior inconsistent statement, failure to give such instruction does not automatically result in reversal but, rather, Court of Appeals reviews record to ascertain whether omission created substantial likelihood of prejudice to defendant. D.C. Code 1981, § 14-102. *Byers v. United States*, 649 A.2d 279, 1994 D.C. App. LEXIS 190 (1994).

Any error in prosecutor's examination of witness concerning whether witness saw defendant shoot victim, viewed in context of use of witness' grand jury testimony to impeach his trial testimony, did not require mistrial or reversal as question was not entirely lacking good-faith basis and immediate curative instruction was thorough; any improper conduct by prosecutor was cured by trial judge's action. *Hawkins v. United States*, 606 A.2d 753, 1992 D.C. App. LEXIS 93 (1992).

Trial court erred in instructing jury that, in the circumstance of a party's impeachment of its own witness, that it could consider prior inconsistent statements, even those made under oath at a grand jury proceeding, as evidence of any fact contained in those statements; however, such error did not constitute plain error. D.C. Code 1981, § 14-102. *Johnson v. United States*, 544 A.2d 270, 1988 D.C. App. LEXIS 68 (1988).

Where no request for cautionary instruction concerning limited purpose for which prior inconsistent statement may be considered was made at trial, Court of Appeals could only reverse upon finding of plain error. *Stewart v. United States*, 490 A.2d 619, 1985 D.C. App. LEXIS 342 (1985).

Trial court's failure to give instruction limiting purposes for which prior inconsistent statement of witness could be used was not plain error where statement of witness was, at most, cumulative evidence. *Stewart v. United States*, 490 A.2d 619, 1985 D.C. App. LEXIS 342 (1985).

The Court of Appeals must render judgment without regard to errors that do not affect the substantial rights of the parties and, hence, when the trial court fails to give an immediate cautionary instruction when a party impeaches its own witness with prior inconsistent statements, the Court of Appeals is not obliged automatically to reverse, but must review the record to ascertain whether it can say with fair assurance that the verdict was not substantially swayed by the error. D.C. Code 1981, § 14-102. *Gordon v. United States*, 466 A.2d 1226, 1983 D.C. App. LEXIS 473 (1983).

Failure of trial court to immediately instruct jury, during Government's case-in-chief, that prior inconsistent statements of Government's own witness in his grand jury testimony concerning placement of automobile and suspects at scene of armed robbery could be considered only in evaluating whether witness' trial testimony was credible, not to establish truth of prior statements, was error, but since the Government had a strong case against the defendant apart from any evidence regarding the witness' placement of the automobile and the suspects at the scene, and the Government used the prior inconsistent statements only to impeach the witness, the error was harmless and was not a basis for reversal. D.C. Code 1981, § 14-102. *Gordon v. United States*, 466 A.2d 1226, 1983 D.C. App. LEXIS 473 (1983).

Where prosecution's impeachment of its own witness related only to collateral issue rather than to central issue in case, substantial rights of defendant were not affected by absence of cautionary instruction, and any error in failing to give such instruction was harmless. *Beale v. United States*, 465 A.2d 796, 1983 D.C. App. LEXIS 411 (1983), writ of certiorari denied by

465 U.S. 1030, 104 S. Ct. 1293, 79 L. Ed. 2d 694, 1984 U.S. LEXIS 1150, 52 U.S.L.W. 3611 (1984).

After prosecution has impeached its own witness, failure of trial court to give cautionary instruction advising jury that prior statement is admissible only for impeachment will not amount to plain error in every case. *Beale v. United States*, 465 A.2d 796, 1983 D.C. App. LEXIS 411 (1983), writ of certiorari denied by 465 U.S. 1030, 104 S. Ct. 1293, 79 L. Ed. 2d 694, 1984 U.S. LEXIS 1150, 52 U.S.L.W. 3611 (1984).

Where prosecutor impeached a government rebuttal witness with prior inconsistent statement witness made to the grand jury which implicated defendant in shooting, trial court's failure to give immediate limiting instruction, even though defense counsel did not request limiting instruction, constituted reversible error. *Lucas v. United States*, 436 A.2d 1282, 1981 D.C. App. LEXIS 386 (1981).

Trial court's failure to give cautionary instruction sua sponte to jury when Government properly impeached its own witness by means of prior inconsistent statement was plain error requiring reversal where there was substantial likelihood of prejudice to defendant arising from jury's likely improper consideration of the impeaching statement as substantive evidence, given knowledge that witness already had been convicted of participation in the same incident for which defendant was on trial. (Per Harris, J., with two Justices concurring in result only.) *Towles v. United States*, 428 A.2d 836, 1981 D.C. App. LEXIS 240 (1981).

Whether trial court's failure to give sua sponte cautionary instruction when a party seeks to impeach its own witness by means of prior inconsistent statement amounts to plain error, in that defendant was likely prejudiced by the failure, shall be evaluated on a case-by-case basis. (Per Harris, J., with two Justices concurring in result only.) *Towles v. United States*, 428 A.2d 836, 1981 D.C. App. LEXIS 240 (1981).

Prosecutor did not improperly impeach its own witness when on redirect prosecutor asked several questions concerning what witness had stated earlier with regard to written statement to police and was shown portion of statement which prompted him to change testimony given on cross-examination that he had been unable to identify defendant from photographs shown him by police, but was merely permitted to refresh witness' recollection; since contents of statement were not read to jury nor was it introduced into evidence, failure of trial court to give cautionary instruction regarding impeachment was not error. D.C. Code § 14-102. *Dobson v. United States*, 426 A.2d 361, 1981 D.C. App. LEXIS 219 (1981).

Right to impeach one's own witness.

Party may impeach its own witnesses only

after establishing good-faith claim of surprise. D.C. Code 1981, § 14-102. *Beale v. United States*, 465 A.2d 796, 1983 D.C. App. LEXIS 411 (1983), writ of certiorari denied by 465 U.S. 1030, 104 S. Ct. 1293, 79 L. Ed. 2d 694, 1984 U.S. LEXIS 1150, 52 U.S.L.W. 3611 (1984).

Party may not impeach own witness unless party satisfies trial court that witness' testimony was surprise and affirmatively damaged case. D.C. Code 1981, § 14-102. *Twyman v. Johnson*, 655 A.2d 850, 1995 D.C. App. LEXIS 47 (1995).

Party may impeach its own witness if court is satisfied that party producing witness was surprised by witness' testimony and that testimony affirmatively damaged its case. D.C. Code 1981, § 14-102. *Hawkins v. United States*, 606 A.2d 753, 1992 D.C. App. LEXIS 93 (1992).

Party may impeach own witness if assertion of surprise at own witness' testimony is in good faith; there is no need for impeachment to neutralize testimony absent showing of prejudice to party. D.C. Code 1981, § 14-102. *Hawkins v. United States*, 606 A.2d 753, 1992 D.C. App. LEXIS 93 (1992).

Rational basis existed for finding of surprise to allow prosecutor to impeach its own witness where witness had told prosecutor before she testified she knew two people named "Lucky" and when she testified at trial she stated she only knew one person by that name, whose description did not match defendant's. D.C. Code 1981, § 14-102. *Stewart v. United States*, 490 A.2d 619, 1985 D.C. App. LEXIS 342 (1985).

Testimony of physician, who performed exploratory surgery and fused joint of patient's right index finger after she received cortisone injections by defendant physician for her arthritis, provided trial court with rational basis for deciding that physician's trial testimony that to "reasonable degree of medical certainty" patient's right index finger was infected with osteomyelitis was not substantially variant from his deposition testimony, and thus defendant physician and medical center were not entitled to impeach physician, who in deposition testified that he was unable to state with reasonable degree of medical certainty that patient had osteomyelitis. D.C. Code 1981, § 14-102. *Crain v. Allison*, 443 A.2d 558, 1982 D.C. App. LEXIS 326 (1982).

In order to justify impeachment of its own witness, party must demonstrate not only surprise, but affirmative damage to its case and where there is no such prejudice, there is no occasion for impeachment. *Scott v. United States*, 412 A.2d 364, 1980 D.C. App. LEXIS 251 (1980).

Since sole justification for impeachment of one's own witness is to remove damage caused by surprise testimony, scope of impeachment must be limited to evidence that will further that end. *Scott v. United States*, 412 A.2d 364, 1980 D.C. App. LEXIS 251 (1980).

Standard for claim of surprise, for purpose of impeaching one's own witness, is that court shall be satisfied that surprise exists. D.C. Code § 14-102. *Parker v. United States*, 363 A.2d 975, 1976 D.C. App. LEXIS 377 (1976).

§ 14-103. Depositions for use in State and Territorial Courts.

When a commission is issued or notice given to take the testimony of a witness found within the District of Columbia, to be used in an action pending in a court of a State, territory, commonwealth, possession, or place under the jurisdiction of the United States, the testimony may be taken by leave of a judge of the United States District Court in like manner and with like effect as other depositions are taken in United States district courts, or by leave of a judge of the Superior Court of the District of Columbia in the manner prescribed by the rules of that court.

(Dec. 23, 1963, 77 Stat. 518, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 143(1).)

Cross references. — Depositions in criminal cases, see § 23-108.

Depositions in Probate Court, see § 16-3110.

Prior Codifications. — 1981 Ed., § 14-103. 1973 Ed., § 14-103.

§ 14-104. Testimony of nonresident witnesses for use in Superior Court.

If the testimony of nonresident witnesses is required by either party to a civil action or proceeding in the Superior Court of the District of Columbia the Court, upon motion designating the names of the witnesses, may appoint an examiner to take their testimony, to whom it shall issue a commission. The testimony shall be taken as provided in the rules of the Superior Court.

(Dec. 23, 1963, 77 Stat. 518, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 143(2)(A).)

Prior Codifications. — 1981 Ed., § 14-104. 1973 Ed., § 14-104.

CHAPTER 3. COMPETENCY OF WITNESSES.

Sec.

- 14-301. Parties and other interested persons generally.
- 14-302. Testimony against deceased or incapable person.
- 14-303. Testimony of deceased or incapable person.
- 14-304. Death or incapacity of partner or other interested person.
- 14-305. Competency of witnesses; impeachment by evidence of conviction of crime.

Sec.

- 14-306. Spouse or domestic partner.
- 14-307. Physicians and mental health professionals.
- 14-308. Assessment officials as expert witnesses in condemnation proceedings.
- 14-309. Clergy.
- 14-310. Domestic violence counselors.
- 14-311. Human trafficking counselors.

§ 14-301. Parties and other interested persons generally.

Except as otherwise provided by law, a person is not incompetent to testify in a civil action or proceeding by reason of his being a party thereto or interested in the result thereof. If otherwise competent to testify, he is competent to give evidence on his own behalf and competent and compellable to give evidence on behalf of any other party to the action or proceeding.

(Dec. 23, 1963, 77 Stat. 518, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 14-301. 1973 Ed., § 14-301.

CASE NOTES

ANALYSIS

- Experts.
- Interest.
- Mental illness.
- Parties compellable to give evidence.
- Purpose.

Experts.

A witness who is not an expert hired by the adversary but is the adversary himself or a defense witness actually involved in the events from which the claim arose has no inherent right to remain silent or to answer only those inquiries which will have no adverse effect on his case. D.C. Code 1981, § 14-301. *Abbey v. Jackson*, 483 A.2d 330, 1984 D.C. App. LEXIS 530 (1984).

Witnesses with personal knowledge of relevant facts do not have a right to refuse to testify on ground that answer will be expert evidence and that they have received no expert witness fee. D.C. Code 1981, § 14-301. *Abbey v. Jackson*, 483 A.2d 330, 1984 D.C. App. LEXIS 530 (1984).

Physicians who were participants or eyewitnesses in events leading to patient's cause of action for negligent nondisclosure could not refuse to testify on pertinent and relevant issues merely because their information resulted from professional training. D.C. Code 1981,

§ 14-301. *Abbey v. Jackson*, 483 A.2d 330, 1984 D.C. App. LEXIS 530 (1984).

Statute allowing a party or a party's witness in a civil suit to be called as a witness by his adversary and questioned as to matters relevant to dispute at issue may not be read as making an exception for information acquired by special training or rendering professional services. D.C. Code 1981, § 14-301. *Abbey v. Jackson*, 483 A.2d 330, 1984 D.C. App. LEXIS 530 (1984).

Interest.

Disinterestedness is not required of expert witnesses any more than it is required of ordinary witnesses. D.C. Code § 14-301. *Liberty Mut. Ins. Co. v. B. Frank Joy Co.*, 424 F.2d 831, 1970 U.S. App. LEXIS 10872 (C.A.D.C. 1970).

Interest of witness is merely one matter that goes to weight of his testimony and does not go to his competence. D.C. Code § 14-301. *Liberty Mut. Ins. Co. v. B. Frank Joy Co.*, 424 F.2d 831, 1970 U.S. App. LEXIS 10872 (C.A.D.C. 1970).

Prosecutor was arguably precluded from impeaching defendant's grandmother regarding her failure to provide alibi information to law enforcement authorities at pretrial detention hearing on prosecution for armed carjacking and related crimes, where grandmother had provided such information to defendant's ap-

pointed counsel. *Matthews v. United States*, 892 A.2d 1100, 2006 D.C. App. LEXIS 10 (2006).

Ruling that precluded defendant in robbery prosecution from cross-examining alleged accomplice, who testified against his will pursuant to a grant of immunity, about a "promise" from the government regarding his sentencing was not abuse of discretion, where alleged accomplice testified on direct examination that he had rejected government's offer without asking for details and also denied receiving any government promises or "assurances" after he refused to testify voluntarily. *Ifelowo v. United States*, 778 A.2d 285, 2001 D.C. App. LEXIS 161 (2001).

Mental illness.

Trial court did not abuse its discretion in finding prosecution witness, who had been diagnosed with paranoid schizophrenia and recently hospitalized for psychiatric problems, competent to testify in prosecution for manslaughter while armed and related weapons offenses; witness did not display kinds of mental impairments that would suggest testimonial incapacity, witness demonstrated understanding of what it meant to testify truthfully and was oriented in time and place, and testimony of witness, although her memory was imperfect, was responsive and her account of events at issue was coherent and consistent with recollections of other witnesses. *Dorsey v. United States*, 935 A.2d 288, 2007 D.C. App. LEXIS 558 (2007).

In the absence of "ongoing manifestations" of hallucinations or other comparably serious present mental irregularities, a history of psychiatric problems and a current diagnosis of mental illness do not suffice to overcome the

presumption against compelling an independent medical examination (IME) to assist the court in determining a witness's competency to testify. *Dorsey v. United States*, 935 A.2d 288, 2007 D.C. App. LEXIS 558 (2007).

Trial court was capable of assessing competency of prosecution witness, who had been diagnosed with paranoid schizophrenia and recently hospitalized for psychiatric problems, without compelling her to undergo an independent medical examination (IME), in prosecution for manslaughter while armed and related weapons offenses; witness was examined under oath, witness did not exhibit distorted perceptions, incoherence or the like, and court and parties had hospital records of witness. *Dorsey v. United States*, 935 A.2d 288, 2007 D.C. App. LEXIS 558 (2007).

Parties compellable to give evidence.

Employer's representative was entitled to question unemployment compensation claimant, given statute making party to proceeding compellable to give evidence on behalf of any other party and fact that claimant had given some testimony, thus making him subject to cross-examination under the Administrative Procedure Act. D.C. Code 1981, §§ 1-1501 et seq., 14-301. *Washington Times v. District of Columbia Dep't of Employment Services*, 530 A.2d 1186, 1987 D.C. App. LEXIS 441 (1987).

Purpose.

Purpose of adverse witness statute is to ensure that persons who are eyewitnesses to and participants in event giving rise to action fully disclose all matters pertinent and relevant to issues in dispute. D.C. Code 1981, § 14-301. *Abbey v. Jackson*, 483 A.2d 330, 1984 D.C. App. LEXIS 530 (1984).

§ 14-302. Testimony against deceased or incapable person.

(a) In a civil action against:

- (1) a person who, from any cause, is legally incapable of testifying, or
- (2) the committee, trustee, executor, administrator, heir, legatee, devisee, assignee, or other representative of a deceased person or of a person so incapable of testifying, a judgment or decree may not be rendered in favor of the plaintiff founded on the uncorroborated testimony of the plaintiff or of the agent, servant, or employee of the plaintiff as to any transaction with, or action, declaration or admission of, the deceased or incapable person.

(b) In an action specified by subsection (a) of this section, if the plaintiff or his agent, servant, or employee, testifies as to any transaction with, or action, declaration, or admission of, the deceased or incapable person, an entry, memorandum, or declaration, oral or written, by the deceased or incapable person, made while he was capable and upon his personal knowledge, may not be excluded as hearsay.

(Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 14-302. 1973 Ed., § 14-302.**CASE NOTES****ANALYSIS**

Applicability of statute.
 Burden of proof.
 Corroboration.
 In general.
 Purpose.

Applicability of statute.

Decedent's stepchildren, who were the previous beneficiaries of a trust that was part of decedent's estate, were substantially likely to prevail in breach of contract action so as to secure a constructive trust, as required to support issuance of a temporary injunction prohibiting trustee from withdrawing assets from the disputed trust to pay for litigation expenses in the action, despite trustee's contention that the dead man's statute barred imposition of a constructive trust; stepchildren offered their own testimony regarding decedent's purported agreement concerning the disputed trust, and such testimony was corroborated so as to defeat the dead man's statute. *In re Estate of Reilly*, 933 A.2d 830, 2007 D.C. App. LEXIS 589 (2007).

Statute providing that in any civil action against the estate of a deceased person, a judgment or decree may not be rendered in favor of plaintiff founded on uncorroborated testimony of plaintiff as to any transactions with the deceased person was applicable to administratrix' claim against decedent's estate for expenditures made on behalf of decedent over the course of several years prior to his death, since administratrix was taking an adversary position by seeking a judgment on the personal claim which would reduce the estate's assets and she stood in shoes of a plaintiff creditor against the estate. D.C. Code 1973, § 14-302. *In re Estate of Turner*, 441 A.2d 274, 1982 D.C. App. LEXIS 273 (1982).

Statute prohibiting judgment against personal representative of deceased on uncorroborated testimony of plaintiff was applicable only to plaintiff, not defendant, and permitting landlady to testify, in suit by decedent's administratrix to recover balance of bank account held in joint names of decedent and decedent's landlady and to recover automobile registered in both decedent's and landlady's names, as to declarations and admissions of decedent did not violate such statute. D.C. Code §§ 14-302, 14-302(a). *Prather v. Hill*, 250 A.2d 690, 1969 D.C. App. LEXIS 214 (App. 1969).

This section does no more than preclude a judgment in favor of a plaintiff and against the representatives of a deceased defendant based on the uncorroborated testimony of the plaintiff as to any action, declaration or admission of the deceased. *Cobb v. Cobb*, 116 WLR 1993 (Super. Ct. 1988).

Where the clear thrust of plaintiff's testimony at trial was that her deceased husband did not provide her with notice of the divorce proceeding and that with diligent efforts, he could have located her, letters, written by the deceased to his sister which bear on the issue of whether he was motivated to falsely represent his effort to locate her, would fall directly within the type of evidence declared admissible by subsection (b). *Cobb v. Cobb*, 116 WLR 1993 (Super. Ct. 1988).

Burden of proof.

When the claim of an inter vivos gift comes after the alleged donor had died, the gift must be proven by clear and convincing evidence. *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Decedent's alleged common law wife did not establish that jointly-registered credit union account and cash management/stock brokerage account were intended as inter vivos gifts; credit union account agreement lacked signatures for joint and survivor election, decedent's will specifically bequeathed the account to alleged wife, thereby clearly indicating that decedent had not thought he had given her the account during his lifetime, funds in cash management/stock brokerage account were never delivered to alleged wife and instead were simply shifted by ledger entry into account alleged wife had opened with decedent's power of attorney, and decedent did not have habit of presenting alleged wife with large or expensive gifts while he was alive. *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Husband and wife who cared for elderly patient during last few months of his life had burden of proving by clear and convincing evidence that money transferred from patient's accounts to them during that period was an inter vivos gift. D.C. Code 1981, § 14-302.

Davis v. Altmann, 492 A.2d 884, 1985 D.C. App. LEXIS 394 (1985).

Under a theory of implied contract administratrix would have been entitled to judgment on her claim for expenditures made on behalf of decedent over the course of several years prior to his death if she had been able to prove that there was evidence, other than express statements attributable to the decedent, from which to conclude that her testimony was probably true. D.C. Code 1973, § 14-302. In re Estate of Turner, 441 A.2d 274, 1982 D.C. App. LEXIS 273 (1982).

Corroboration.

District of Columbia's Dead Man Statute precluded negligence, assault and battery, fraud and intentional infliction of emotional distress action against estate of plaintiff's sexual partner, where only evidence offered of partner's promise of his nonexposure to Acquired Immune Deficiency ("AIDS") virus was testimony of plaintiff. D.C. Code 1981, § 14-302. Hosford v. Estate of Campbell, 708 F. Supp. 7, 1989 U.S. Dist. LEXIS 7241 (1989).

Dead man's statute did not defeat siblings' claim that, in accordance with wishes of mother, the deceased joint tenant, daughter, who was surviving joint tenant on deed to family home, should be deemed trustee for all children, rather than sole owner of property, where there was sufficient corroboration of siblings' testimony supporting imposition of constructive trust. D.C. Code § 14-302(a). Gray v. Gray, 412 A.2d 1208, 1980 D.C. App. LEXIS 268 (1980).

A claimant's testimony is sufficient under dead man's statute if corroborating evidence, taken as whole, tends to make his position substantially more credible. D.C. Code § 14-302(a). Gray v. Gray, 412 A.2d 1208, 1980 D.C. App. LEXIS 268 (1980).

Where witnesses, not disqualified by statute, testified that in their presence decedent spoke of car as landlady's car and of joint bank account in manner indicating he considered it as landlady's, there was sufficient corroboration to permit landlady to testify, in suit by decedent's administratrix to recover balance of bank account held in joint names of decedent and decedent's landlady and to recover automobile registered in both decedent's and landlady's names as to declarations and admissions of decedent, even if statute prohibiting judgment against decedent's personal representative on uncorroborated testimony of plaintiff was applicable. D.C. Code §§ 14-302, 14-302(a). Prather v. Hill, 250 A.2d 690, 1969 D.C. App. LEXIS 214 (App. 1969).

Record disclosing that trial court in dismissing claims for personal services rendered decedent may have found corroborating testimony was not sufficient to produce belief that claim-

ants' testimony was probably true would not support contention that trial court too narrowly interpreted dead man's statute in dismissing claims. D.C. Code § 14-302. Toliver v. Durham, 240 A.2d 359, 1968 D.C. App. LEXIS 140 (App. 1968).

In general.

Under District of Columbia law, testimony of condominium's owner that her deceased co-owner did not in fact make 50% contribution to condominium's mortgage payments, as indicated by his tax treatment for ownership of condominium, but rather wanted payments to appear to have been made in order to secure tax advantage, was barred by dead man's statute in owner's action against co-owner's estate seeking distribution of proceeds of sale of condominium. Bldg. Servs. Unlimited Inc. v. Riley, 238 F.Supp.2d 255, 2002 U.S. Dist. LEXIS 24227 (2002).

In action by personal representative of decedent's estate against bank and others to obtain return of proceeds of issued check made payable in decedent's name, genuine issue of material fact existed as to fact of and validity of asserted general power of attorney authorizing decedent's son, who presented the check to the bank, to act on behalf of his mother, precluding summary judgment. Civil Rule 56(c); D.C. Code 1981, § 14-302. Kuder v. United Nat'l Bank, 497 A.2d 1105, 1985 D.C. App. LEXIS 483 (1985).

Dead man's statute permits judgment against estate of deceased person based essentially on the survivor's testimony if there is other evidence from which reasonable men might conclude that his testimony is probably true. D.C. Code § 14-302. Toliver v. Durham, 240 A.2d 359, 1968 D.C. App. LEXIS 140 (App. 1968).

Under statute prohibiting judgment against representative of decedent on unsupported testimony of adversary, each case depends upon its own facts, and test is whether evidence, taken as whole, tends to make story substantially more credible. D.C. Code § 14-302. Toliver v. Durham, 240 A.2d 359, 1968 D.C. App. LEXIS 140 (App. 1968).

Purpose.

Under District of Columbia law, purpose of dead man's statute is to protect against potentially fraudulent suits based only on claimant's word that deceased was somehow obligated to claimant. Bldg. Servs. Unlimited Inc. v. Riley, 238 F.Supp.2d 255, 2002 U.S. Dist. LEXIS 24227 (2002).

The dead man's statute was intended to protect a person representing deceased against potentially fraudulent suits based only on a claimant's word that deceased was under obligation to claimant. D.C. Code § 14-302(a).

Gray v. Gray, 412 A.2d 1208, 1980 D.C. App. LEXIS 268 (1980).

§ 14-303. Testimony of deceased or incapable person.

When a party, after having testified at a time while he was competent to do so, dies or becomes incapable of testifying, his testimony may be given in evidence in any trial or hearing in relation to the same subject-matter between the same parties or their legal representatives, as the case may be; and in such a case the opposite party may testify in opposition thereto.

(Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 14-303. 1973 Ed., § 14-303.

CASE NOTES

In general.

Even assuming co-defendant's testimony at defendant's retrial contradicted witness's testimony at first trial, such contradiction did not preclude admission of witness's prior recorded testimony after witness was determined to be unavailable, at retrial for murder and associated weapons offenses. *Mercer v. United States*, 864 A.2d 110, 2004 D.C. App. LEXIS 579 (2004), writ of certiorari denied by 543 U.S. 1188, 125 S. Ct. 1425, 161 L. Ed. 2d 191, 2005 U.S. LEXIS 2103, 73 U.S.L.W. 3513 (2005).

The Court of Appeals reviews a trial court's determination to admit or deny the admission of prior recorded testimony for abuse of discretion, and also treat the determination as a factual finding to be reversed only if it is plainly wrong or without evidence to support it. *Mercer v. United States*, 864 A.2d 110, 2004 D.C. App. LEXIS 579 (2004), writ of certiorari denied by 543 U.S. 1188, 125 S. Ct. 1425, 161 L. Ed. 2d 191, 2005 U.S. LEXIS 2103, 73 U.S.L.W. 3513 (2005).

State was entitled to use prior recorded testimony of three unavailable witnesses at retrial

for murder and associated weapons offenses, where issues on retrial were substantially similar, as charges were identical, and witnesses were subject to cross-examination in first trial. *Mercer v. United States*, 864 A.2d 110, 2004 D.C. App. LEXIS 579 (2004), writ of certiorari denied by 543 U.S. 1188, 125 S. Ct. 1425, 161 L. Ed. 2d 191, 2005 U.S. LEXIS 2103, 73 U.S.L.W. 3513 (2005).

Prior recorded testimony is admissible as an exception to the hearsay rule if the proponent establishes that: (1) the direct testimony of the declarant is unavailable; (2) the previous testimony was given under oath or affirmation in a legal proceeding; (3) the issues in the two proceedings were substantially the same; and (4) the party against whom the testimony is now offered had the opportunity to cross-examine the declarant at the former proceeding. *Mercer v. United States*, 864 A.2d 110, 2004 D.C. App. LEXIS 579 (2004), writ of certiorari denied by 543 U.S. 1188, 125 S. Ct. 1425, 161 L. Ed. 2d 191, 2005 U.S. LEXIS 2103, 73 U.S.L.W. 3513 (2005).

§ 14-304. Death or incapacity of partner or other interested person.

Where any of the original parties to a contract or transaction which is the subject of investigation are partners or other joint contractors, or jointly entitled or liable, and some of them have died or become incapable of testifying, any others with whom the contract or transaction was personally made or had, or in whose presence or with whose privity it was made or had, or admissions in relation to the same were made, are not, nor is the adverse party, incompetent to testify because some of the parties or joint contractors, or those jointly entitled or liable, have died or become incapable of testifying.

(Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 14-304. 1973 Ed., § 14-304.

§ 14-305. Competency of witnesses; impeachment by evidence of conviction of crime.

(a) No person is incompetent to testify, in either civil or criminal proceedings, by reason of his having been convicted of a criminal offense.

(b)(1) Except as provided in paragraph (2), for the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a criminal offense shall be admitted if offered, either upon the cross-examination of the witness or by evidence aliunde, but only if the criminal offense (A) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, or (B) involved dishonesty or false statement (regardless of punishment). A party establishing conviction by means of cross-examination shall not be bound by the witness' answers as to matters relating to the conviction.

(2)(A) Evidence of a conviction of a witness is inadmissible under this section if —

(i) the conviction has been the subject of a pardon, annulment, or other equivalent procedure granted or issued on the basis of innocence, or

(ii) the conviction has been the subject of a certificate of rehabilitation or its equivalent and such witness has not been convicted of a subsequent criminal offense.

(B) In addition, no evidence of any conviction of a witness is admissible under this section if a period of more than ten years has elapsed since the later of (i) the date of the release of the witness from confinement imposed for his most recent conviction of any criminal offense, or (ii) the expiration of the period of his parole, probation, or sentence granted or imposed with respect to his most recent conviction of any criminal offense.

(c) For purposes of this section, to prove conviction of crime, it is not necessary to produce the whole record of the proceedings containing the conviction, but the certificate, under seal, of the clerk of the court wherein the proceedings were had, stating the fact of the conviction and for what cause, shall be sufficient.

(d) The pendency of an appeal from a conviction does not render evidence of that conviction inadmissible under this section. Evidence of the pendency of such an appeal is admissible.

(Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 550, Pub. L. 91-358, title I, § 133(a).)

Prior Codifications. — 1981 Ed., § 14-305. 1973 Ed., § 14-305.

CASE NOTES

ANALYSIS

Acts not constituting "conviction" for impeachment purposes.

Admissibility of prior offenses, generally.

Applicability.

Closing arguments.

Criminal offenses admissible for impeachment purposes—In general.

—Assault offenses, criminal offenses admissible for impeachment purposes.

—Drug offenses, criminal offenses admissible for impeachment purposes.

—Theft offenses, criminal offenses admissible for impeachment purposes.

Cross-examination for purpose of impeachment concerning prior offenses.

Discretion of court.

Due process.

Equal protection.

Ex post facto.

Facts of prior crime.

In general.

Instructions.

—In general.

—Sua sponte instructions.

Juvenile arrests and convictions.

Lapse of time since punishment.

Mitigation or explanation of conviction evidence.

Pendency of appeal.

Power of Congress.

Powers of Court of Appeals.

Practice and procedure, generally.

Prior arrests.

Prior law.

Purpose.

Purpose of amendment.

Remand.

Review.

Use of evidence for other than impeachment purposes.

Validity.

Acts not constituting "conviction" for impeachment purposes.

Mere "pleas of guilty" was insufficient to constitute "conviction" within statute authorizing attack upon credibility of witnesses by admission of prior "convictions." D.C. Code § 14-305. *United States v. Lee*, 509 F.2d 400, 1974 U.S. App. LEXIS 5476 (C.A.D.C. 1974), writ of certiorari denied by 420 U.S. 1006, 95 S. Ct. 1451, 43 L. Ed. 2d 765, 1975 U.S. LEXIS 1180 (1975).

A witness may be cross-examined on a prior bad act that has not resulted in a criminal conviction, and thereby impeached, only where: (1) the examiner has a factual predicate for the question, and (2) the bad act bears directly upon the veracity of the witness in respect to

the issues involved in the trial. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

Assault victim's expulsion from neighborhood stores for shoplifting did not bear directly on her veracity in respect to issues involved in the assault trial, and thus, victim could not be impeached through cross-examination regarding prior bad act of shoplifting which had not resulted in criminal conviction; there was no evidence that the manner in which victim shoplifted involved an element of deceit or falsification, as opposed to stealth. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

When the prior bad conduct of a witness does not rise to the level of a criminal conviction, two requirements must be met before such conduct can be used to impeach the credibility of the witness: (1) the examiner must have a factual predicate for the question, and (2) the bad act must bear directly upon the veracity of the witness in respect to the issues involved in the trial. *Dean v. Garland*, 779 A.2d 911, 2001 D.C. App. LEXIS 189 (2001), writ of certiorari denied by 536 U.S. 924, 122 S. Ct. 2591, 153 L. Ed. 2d 780, 2002 U.S. LEXIS 4497, 70 U.S.L.W. 3774 (2002).

Conviction stemming from summary court-martial proceeding cannot be used for impeachment purposes because summary court-martial proceeding lacks trustworthiness of conviction resulting from more formal and adversarial criminal proceedings. 10 U.S.C. § 820; D.C. Code 1981, § 14-305. *Zellers v. United States*, 682 A.2d 1118, 1996 D.C. App. LEXIS 163 (1996).

Government witnesses' probation that was imposed without entry of judgment of conviction was not "prior conviction" for impeachment purposes. D.C. Code 1981, §§ 14-305(b), 33-541(e), (e)(1), 2). *Twitty v. United States*, 541 A.2d 612, 1988 D.C. App. LEXIS 82 (1988), writ of certiorari denied by 494 U.S. 1008, 110 S. Ct. 1307, 108 L. Ed. 2d 483, 1990 U.S. LEXIS 1106, 58 U.S.L.W. 3545 (1990).

As opposed to conviction, guilty plea on which no judgment had been entered did not present proper basis for impeachment. D.C. Code 1973, § 14-305(b)(1), (c). *Godfrey v. United States*, 454 A.2d 293, 1982 D.C. App. LEXIS 498 (1982).

Cross-examination of defendant based on prior conviction for felonies and other crimes involving dishonesty or false statements does not include cross-examination on charges which were dropped in exchange for a guilty plea. D.C. Code 1981, § 14-305. *Coles v. United States*, 452 A.2d 1190, 1982 D.C. App. LEXIS 493 (1982).

Admissibility of prior offenses, generally.

Generally, evidence of prior criminal conviction

tion is not admissible on issue of guilt. *United States v. Carter*, 482 F.2d 738, 1973 U.S. App. LEXIS 8836 (C.A.D.C. 1973).

Prosecutor's eliciting of testimony from defendant that defendant had previously been convicted of six counts of robbery and assault with a dangerous weapon, which was designed to persuade jury that defendant would rob a man, and in fact committed the robbery for which he was charged, constituted reversible error. D.C. Code §§ 14-305(b), 22-2901. *United States v. Carter*, 482 F.2d 738, 1973 U.S. App. LEXIS 8836 (C.A.D.C. 1973).

Evidence of prior crimes or convictions is admissible for certain limited purposes for which the probative value of the evidence outweighs its prejudicial character. D.C. Code § 14-305(b). *United States v. Carter*, 482 F.2d 738, 1973 U.S. App. LEXIS 8836 (C.A.D.C. 1973).

If evidence of prior conviction of defendant was admissible on any other ground than for purpose of attacking his credibility, admission of evidence was properly within the discretion of the trial judge regardless of the constitutionality of amended statute respecting the admission of evidence of prior crimes for purpose of attacking credibility of witness. D.C. Code § 14-305. *United States v. Tyson*, 470 F.2d 381, 1972 U.S. App. LEXIS 7384 (C.A.D.C. 1972), writ of certiorari denied by 410 U.S. 985, 93 S. Ct. 1512, 36 L. Ed. 2d 182, 1973 U.S. LEXIS 3045 (1973).

Evidence of prior conviction must be received with caution for it not only permits prosecutor to throw doubt upon defendant's testimony regarding facts of case being tried but also may result in casting such an atmosphere of aspersions and disrepute about defendant as to convince jury that he is habitual lawbreaker who should be punished and confined for general good of community. *Pinkney v. United States*, 363 F.2d 696, 1966 U.S. App. LEXIS 5565 (C.A.D.C. 1966).

Evidence of prior convictions of the former boyfriend of defendant's girlfriend for drug trafficking while armed and possession of a particular brand of pistol was relevant at a trial for assault with a deadly weapon (ADW) and possession of an unregistered firearm (UF) after a pistol of the same brand was found in the girlfriend's hallway closet; in light of the government's emphasis in argument that the pistol found in the closet bolstered a witness's testimony about the alleged ADW because it supported an inference that defendant had ready access to a gun, the prior-convictions evidence had some tendency to prove that defendant did not know about the gun or have ready access to it. *Hunter v. United States*, 980 A.2d 1158, 2009 D.C. App. LEXIS 459 (2009).

Even if otherwise meeting the test for admissibility as an exception to Drew rule, which

restricts use of other crimes evidence, evidence must still be excluded if the danger of unfair prejudice resulting from its admission substantially outweighs its probative value. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

Exceptions to Drew rule, which restricts use of other crimes evidence, permit a party to offer evidence for specified limited purposes; such evidence is usually restricted to proof of motive, intent, absence of mistake or accident, common scheme or plan, or identity. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

Evidence of crimes, independent of the crime charged, is admissible for legitimate purposes, such as to prove motive, intent, absence of mistake or accident, a common scheme or plan, or identity of the person charged with the crime on trial. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

Evidence of crimes, independent of the crime charged, are inadmissible to prove a defendant's disposition to commit the crime charged. *Frye v. United States*, 926 A.2d 1085, 2005 D.C. App. LEXIS 532 (2005).

Evidence that \$774 was found on defendant's person at time of arrest for a single drug sale only a few minutes earlier was admissible on cocaine distribution charge to complete the story of the crime by proving its immediate context; that amount of money did not inherently reflect a prior bad act and thus was not propensity evidence, defendant was free to offer jury an innocent explanation, and he was also free to request instruction restricting relevance of the money to whether he knowingly and intentionally distributed drugs at time and place charged. *McFarland v. United States*, 821 A.2d 348, 2003 D.C. App. LEXIS 217 (2003).

Evidence of one crime is inadmissible to prove disposition to commit crime, from which the jury may infer that the defendant committed the crime charged. *McFarland v. United States*, 821 A.2d 348, 2003 D.C. App. LEXIS 217 (2003).

Generally, evidence of other crimes is not admissible, but there are exceptions to that rule, including admission of such evidence to explain immediate circumstances surrounding offense charged. *Welch v. United States*, 807 A.2d 596, 2002 D.C. App. LEXIS 536 (2002), writ of certiorari denied by 537 U.S. 1132, 123 S. Ct. 914, 154 L. Ed. 2d 821, 2003 U.S. LEXIS 380, 71 U.S.L.W. 3473 (2003).

Even when "other crimes" evidence is relevant to explain immediate circumstances surrounding charged offense, it may be excluded if its prejudicial effect substantially outweighs its probative value. *Welch v. United States*, 807 A.2d 596, 2002 D.C. App. LEXIS 536 (2002), writ of certiorari denied by 537 U.S. 1132, 123

S. Ct. 914, 154 L. Ed. 2d 821, 2003 U.S. LEXIS 380, 71 U.S.L.W. 3473 (2003).

"Other crimes" evidence of defendant's drug dealing was relevant in murder prosecution to explain events leading up to murder, including why defendant came to home of victim's cousin and why victim gave defendant a ride to place where defendant allegedly stated drugs were hidden, and probative value of that evidence was not outweighed by prejudicial effect. *Welch v. United States*, 807 A.2d 596, 2002 D.C. App. LEXIS 536 (2002), writ of certiorari denied by 537 U.S. 1132, 123 S. Ct. 914, 154 L. Ed. 2d 821, 2003 U.S. LEXIS 380, 71 U.S.L.W. 3473 (2003).

"Other crimes" evidence that defendant solicited sex from government witness for \$8.00 was relevant, in prosecution for murder of that witness' cousin that occurred only a few hours later, to explain events surrounding charged crime, including how defendant came to be at witness' home and to accept a ride from her cousin, and probative value of that evidence was not outweighed by prejudicial effect. *Welch v. United States*, 807 A.2d 596, 2002 D.C. App. LEXIS 536 (2002), writ of certiorari denied by 537 U.S. 1132, 123 S. Ct. 914, 154 L. Ed. 2d 821, 2003 U.S. LEXIS 380, 71 U.S.L.W. 3473 (2003).

Drew rule generally prohibits the use of prior crimes or prior bad acts offered to prove a predisposition to commit charged offenses. *Curry v. United States*, 793 A.2d 479, 2002 D.C. App. LEXIS 51 (2002).

Exceptions to Drew rule, which restricts use of other crimes evidence, permit a party to offer such evidence for specified limited purposes, e.g., proof of motive, intent, absence of mistake or accident, common scheme or plan, or identity. *Curry v. United States*, 793 A.2d 479, 2002 D.C. App. LEXIS 51 (2002).

On a proffer of other crimes evidence, a trial judge must consider whether the evidence is probative on a material contested issue. *Curry v. United States*, 793 A.2d 479, 2002 D.C. App. LEXIS 51 (2002).

The trial court must consider whether other crimes evidence, though offered pursuant to an exception, does not bear primarily on predisposition to commit a crime. *Curry v. United States*, 793 A.2d 479, 2002 D.C. App. LEXIS 51 (2002).

Trial court, on a proffer of other crimes evidence, must inquire whether the other behavior is fairly attributable to the accused. *Curry v. United States*, 793 A.2d 479, 2002 D.C. App. LEXIS 51 (2002).

Evidence of a crime for which the accused is not on trial is inadmissible to prove disposition to commit crime, from which the jury may infer that the defendant committed the crime charged; other crimes evidence is admissible, however, when it is relevant and important to the issue of intent. *Riley v. United States*, 790 A.2d 538, 2002 D.C. App. LEXIS 12 (2002).

For evidence of other crimes to be admissible, the defendant's intent must be genuinely in issue, not merely in the sense that it is an element of the offense, but in the sense that it is genuinely controverted. *Riley v. United States*, 790 A.2d 538, 2002 D.C. App. LEXIS 12 (2002).

Where intent is not controverted in any meaningful sense, evidence of other crimes to prove intent is so prejudicial per se that it is inadmissible as a matter of law. *Riley v. United States*, 790 A.2d 538, 2002 D.C. App. LEXIS 12 (2002).

Evidence of one crime is inadmissible to prove disposition to commit crime, from which the jury may infer that the defendant committed the crime charged; since the likelihood that juries will make such an improper inference is high, courts presume prejudice and exclude evidence of other crimes unless that evidence can be admitted for some substantial, legitimate purpose. *Coleman v. United States*, 779 A.2d 297, 2001 D.C. App. LEXIS 183 (2001).

"Other crimes" evidence may be admitted where relevant to a wide range of issues, such as intent, identity, motive, absence of mistake or accident, or common scheme or plan, and where its probative value is not substantially outweighed by prejudice. *Coleman v. United States*, 779 A.2d 297, 2001 D.C. App. LEXIS 183 (2001).

Courts proceed on the assumption that "other crimes" evidence is inadmissible. *Coleman v. United States*, 779 A.2d 297, 2001 D.C. App. LEXIS 183 (2001).

"Other crimes" evidence, in form of testimony by defendant's sister on cross-examination by defense counsel, that defendant had set fires before in his father's house was inadmissible in prosecution for felony malicious destruction of property, alleging that defendant again set that house on fire. *Coleman v. United States*, 779 A.2d 297, 2001 D.C. App. LEXIS 183 (2001).

While evidence of prior convictions is admissible on issue of credibility, it is not generally admissible on issue of guilt. D.C. Code 1981, § 14-305(b)(1). *Harris v. United States*, 618 A.2d 140, 1992 D.C. App. LEXIS 316 (1992).

Where intent is not controverted in any meaningful sense, evidence of other crimes to prove intent is so prejudicial per se that it is inadmissible as matter of law. *Thompson v. United States*, 546 A.2d 414, 1988 D.C. App. LEXIS 138 (1988).

Prior conviction may not be introduced by prosecution to prove that defendant is guilty of crime with which he is charged. *Dorman v. United States*, 460 A.2d 986, 1983 D.C. App. LEXIS 379 (1983).

A prior conviction may not be introduced by prosecution to prove that defendant is guilty of crime with which he is charged, but once defendant testifies, his credibility may be impeached by reference to prior conviction. *Fields v.*

United States, 396 A.2d 522, 1978 D.C. App. LEXIS 372 (1978).

Facts of prior crime are not admissible to prove general disposition to commit crime or a specific crime. D.C. Code § 14-305(b)(1). Ward v. United States, 386 A.2d 1180, 1978 D.C. App. LEXIS 375 (1978).

Generally, evidence of prior convictions is admissible only for purpose of attacking credibility and not for use as proof of guilt. Jenkins v. United States, 374 A.2d 581, 1977 D.C. App. LEXIS 324 (1977), writ of certiorari denied by 434 U.S. 894, 98 S. Ct. 274, 54 L. Ed. 2d 182, 1977 U.S. LEXIS 3594 (1977).

Applicability.

District of Columbia Court Reform Act's requirement that evidence of certain types of prior crimes be admitted for impeachment purposes applies to trials of District of Columbia Code offenses conducted in United States district court during transition period established by Code. D.C. Code §§ 11-502(2), 14-305. United States v. Yates, 524 F.2d 1282, 1975 U.S. App. LEXIS 12018 (C.A.D.C. 1975).

Where indictment is triable in United States District Court for District of Columbia because it includes both United States Code and District of Columbia Code offenses, District of Columbia Code provision for mandatory admission of witness impeachments by conviction is not operative; rather, witness impeachment will be conducted under federal evidentiary law, including Federal Rules of Evidence, when effective. D.C. Code §§ 11-502, 11-946, 14-305; Fed.Rules Crim.Proc. rule 26, 18 U.S.C.; Federal Rules of Evidence, rules 609, 1101(a), 18 U.S.C. United States v. Belt, 514 F.2d 837, 1975 U.S. App. LEXIS 14203 (C.A.D.C. 1975).

District of Columbia statute providing for mandatory admission of witness impeachment by conviction applies to trial in United States District Court for District of Columbia of District of Columbia Code indictments returned before August 1, 1972. D.C. Code §§ 11-502, 14-305; U.S. Const. art. 1, § 8, cl. 17; Amendments. 5, 6. United States v. Belt, 514 F.2d 837, 1975 U.S. App. LEXIS 14203 (C.A.D.C. 1975).

Provision of District of Columbia Code that evidence of criminal defendant's prior convictions shall be admitted for impeachment purposes was intended to apply only to District of Columbia Code crimes and not to apply to United States Code crimes. D.C. Code § 14-305; Fed.Rules Crim.Proc. rule 26, 18 U.S.C.; Federal Rules of Evidence, rule 403, 18 U.S.C. United States v. Hairston, 495 F.2d 1046, 1974 U.S. App. LEXIS 9333 (C.A.D.C. 1974).

Closing arguments.

There is no impropriety per se in prosecutor's referring in closing argument to defendant's prior convictions, if defendant has testified.

D.C. Code 1981, § 14-305(b)(1). Jones v. United States, 579 A.2d 250, 1990 D.C. App. LEXIS 205 (1990).

Criminal offenses admissible for impeachment purposes—In general.

Defense witness' one-year-old conviction for armed robbery was properly admitted into evidence, where conviction was recent, involved a serious crime, and witness' credibility was important to corroborate defendant's story. Fed.Rules Evid.Rule 609(a)(1), 18 U.S.C. United States v. Lipscomb, 702 F.2d 1049, 1983 U.S. App. LEXIS 29758 (C.A.D.C. 1983).

Fact that a defendant is his only witness or his prior crimes were serious does not bar introduction of evidence of prior crimes on issue of defendant's credibility as a witness. D.C. Code § 14-305. United States v. McIntosh, 426 F.2d 1231, 1970 U.S. App. LEXIS 10357 (C.A.D.C. 1970).

Convictions which rest on dishonest conduct relate to credibility of witness while those of violent or assaultive crimes generally do not. D.C. Code § 14-305. Gordon v. U.S., 383 F.2d 936, 1967 U.S. App. LEXIS 5100 (C.A.D.C. 1967).

Traffic violations, however serious, generally do not relate to credibility. D.C. Code § 14-305. Gordon v. U.S., 383 F.2d 936, 1967 U.S. App. LEXIS 5100 (C.A.D.C. 1967).

Acts of deceit, fraud, cheating, or stealing are universally regarded as conduct which reflects adversely on a man's honesty and integrity while acts of violence which may result from a short temper, a combative nature, extreme provocation or other causes generally have little or no direct bearing on honesty and veracity. Gordon v. U.S., 383 F.2d 936, 1967 U.S. App. LEXIS 5100 (C.A.D.C. 1967).

"Crime," within statute to effect that no person shall be incompetent to testify by reason of his having been convicted of crime, but such fact may be given in evidence to affect his credit as witness, does not encompass so-called petty offenses to which right of trial by jury does not apply. D.C. Code 1961, § 14-305; U.S. Const. art. 3, § 2, cl. 3. Pinkney v. United States, 363 F.2d 696, 1966 U.S. App. LEXIS 5565 (C.A.D.C. 1966).

Government was permitted to use co-defendant's prior convictions, including his prior conviction for carrying a pistol without a license (CPWL), during his murder trial to impeach his credibility; prosecutor simply elicited co-defendant's admission that he had been convicted of three prior offenses after which the court instructed the jury on their limited use. Hammond v. United States, 880 A.2d 1066, 2005 D.C. App. LEXIS 414 (2005), writ of certiorari denied by 547 U.S. 1184, 126 S. Ct. 2373, 165 L. Ed. 2d 287, 2006 U.S. LEXIS 4430, 74 U.S.L.W. 3677 (2006), writ of certiorari de-

nied by 549 U.S. 931, 127 S. Ct. 374, 166 L. Ed. 2d 231, 2006 U.S. LEXIS 6404, 75 U.S.L.W. 3174 (2006).

The State presented sufficient evidence to establish defendant's prior assault conviction, and thus the assault conviction created a "link" to defendant's prior murder conviction which allowed for the admission of the murder conviction as impeachment evidence; the State presented a certificate entitled "Warrant of Arrest" which stated defendant had been convicted of assault and sentenced to 30 days incarceration, and a notarized report from the National Crime Information Center (NCIC) which stated that defendant had been convicted of assault, and both documents referred to defendant's conviction occurring in the same court on the same date. *Haley v. United States*, 799 A.2d 1201, 2002 D.C. App. LEXIS 312 (2002).

Crimes of passion or those resulting from short temper, such as simple assault, are excluded from misdemeanors which can be used for impeachment purposes. D.C. Code 1981, § 14-305(b)(1). *Harris v. United States*, 618 A.2d 140, 1992 D.C. App. LEXIS 316 (1992).

Defendant's prior conviction of threats did not qualify for admission under statute permitting introduction of prior convictions for purpose of attacking credibility of witness. D.C. Code 1981, §§ 14-305(b)(1), (b)(1)(A, B), 22-507. *James v. United States*, 514 A.2d 793, 1986 D.C. App. LEXIS 416 (1986).

Prior convictions are admissible to impeach a defendant, although not to prove that he is guilty of the crime with which he is charged. *Ford v. United States*, 487 A.2d 580, 1984 D.C. App. LEXIS 584 (1984).

Under provision allowing use of certain prior convictions to impeach witness, convictions are impeachable or not by reference to categories of crime, not to facts behind particular conviction. D.C. Code § 14-305. *Bates v. United States*, 403 A.2d 1159, 1979 D.C. App. LEXIS 419 (1979).

Defendant's prior conviction of carrying a pistol without a license was within purview of statute providing that conviction of a crime is admissible for impeachment purposes if crime involved dishonesty or false statement. D.C. Code §§ 14-305, 14-305(b)(1)(B), 22-3204. *Williams v. United States*, 337 A.2d 772, 1975 D.C. App. LEXIS 384 (1975).

— Assault offenses, criminal offenses admissible for impeachment purposes.

Crime of assault is only remotely, if at all, probative on issue of veracity of a defendant who testifies at his own trial. D.C. Code § 14-305. *Jones v. United States*, 402 F.2d 639, 1968 U.S. App. LEXIS 6161 (C.A.D.C. 1968).

In proceeding in which accused were charged with assault on three police officers, even if documents, which were within officers' personnel records and which accused sought to dis-

cover, reflected prior unlawful assaultive acts on part of such officers, the documents were not discoverable, under rule providing for disclosure of documents material to preparation of the defense, on ground that such documents could be used to impeach officers' credibility, in view of fact that unlawful assaultive conduct does not involve dishonesty or false statement. D.C. Code §§ 14-305, 22-505(a); D.C. Code SCR, Criminal Rules 16, 16(a)(1)(C), (b). *United States v. Akers*, 374 A.2d 874, 1977 D.C. App. LEXIS 333 (1977).

— Drug offenses, criminal offenses admissible for impeachment purposes.

Narcotics convictions of a defendant bear weight on issue of his credibility as a witness. *United States v. McIntosh*, 426 F.2d 1231, 1970 U.S. App. LEXIS 10357 (C.A.D.C. 1970).

If judge determines in pretrial hearing that one of a number of defendant's prior convictions is to be introduced for impeachment purposes, it is not error per se to allow impeachment by a narcotics conviction under statute allowing fact of prior conviction to be given in evidence to affect defendant's credibility as a witness. D.C. Code § 14-305. *United States v. McIntosh*, 426 F.2d 1231, 1970 U.S. App. LEXIS 10357 (C.A.D.C. 1970).

Possession of marijuana, for which defendant had a prior conviction, involved "dishonesty or false statement" within meaning of statute permitting impeachment of a witness by a prior conviction involving dishonesty or false statement, regardless of punishment. D.C. Code 1981, § 14-305(b)(1). *Holt v. United States*, 675 A.2d 474, 1996 D.C. App. LEXIS 67 (1996), writ of certiorari denied by 519 U.S. 866, 117 S. Ct. 176, 136 L. Ed. 2d 117, 1996 U.S. LEXIS 5456, 65 U.S.L.W. 3261 (1996).

Prior conviction for possession of narcotics involved "dishonesty or false statement" and could be used for impeachment. D.C. Code § 14-305(b)(1). *Durant v. United States*, 292 A.2d 157, 1972 D.C. App. LEXIS 416 (1972), writ of certiorari denied by 409 U.S. 1127, 93 S. Ct. 946, 35 L. Ed. 2d 259, 1973 U.S. LEXIS 3691 (1973).

— Theft offenses, criminal offenses admissible for impeachment purposes.

Defense witness' robbery conviction was admissible in robbery prosecution for impeachment purposes, notwithstanding contention that robbery was not crime involving dishonest conduct. D.C. Code §§ 14-305(b)(1), 22-2901. *United States v. Baber*, 447 F.2d 1267, 1971 U.S. App. LEXIS 8861 (C.A.D.C. 1971), writ of certiorari denied by 404 U.S. 957, 92 S. Ct. 324, 30 L. Ed. 2d 274, 1971 U.S. LEXIS 452 (1971).

Evidence of defendant's prior petit larceny conviction was properly received in subsequent prosecution for unauthorized use of motor ve-

hicle, possession of sawed-off shotgun, and carrying a dangerous weapon, where defendant's testimony that he had not stolen the automobile directly conflicted with credible testimony offered by prosecution, and petit larceny involved elements of "deceit, fraud, cheating, or stealing" which reflect "adversely on a man's honesty and integrity". D.C. Code § 14-305. *Smith v. United States*, 406 F.2d 667, 1968 U.S. App. LEXIS 4484 (C.A.D.C. 1968), writ of certiorari denied by 394 U.S. 963, 89 S. Ct. 1315, 22 L. Ed. 2d 564, 1969 U.S. LEXIS 2017 (1969).

Larceny or petty theft is a crime of stealth in most cases, not of deceit, and thus, evidence of such prior acts not resulting in conviction should usually be disallowed as impeachment evidence during cross-examination. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

In prosecution for attempted burglary in the second degree and attempted petit larceny, prosecutor's impeachment of defendant with a prior conviction for larceny at the outset of defendant's cross-examination was proper. D.C. Code 1981, §§ 14-305, 22-103, 22-1801(b), 22-2202. *Baptist v. United States*, 466 A.2d 452, 1983 D.C. App. LEXIS 471 (1983).

In prosecution for attempted burglary in the second degree and attempted petit larceny, prosecutor's impeachment of defendant with a prior attempted robbery conviction following prosecutor's questioning defendant concerning defendant's alleged car breakdown, possession of pliers and wire cutters, and his discovery of a hole in the fence to the train yard in which the offenses occurred was proper. D.C. Code 1981, §§ 14-305, 22-103, 22-1801(b), 22-2202. *Baptist v. United States*, 466 A.2d 452, 1983 D.C. App. LEXIS 471 (1983).

In prosecution for robbery, defendant could be impeached with his prior conviction of unlawful entry; unlawful entry involved "dishonesty" akin to housebreaking. D.C. Code §§ 14-305(b)(1)(B), 22-2901, 22-3102. *Bates v. United States*, 403 A.2d 1159, 1979 D.C. App. LEXIS 419 (1979).

Defendant's prior conviction for attempted house breaking was admissible for impeachment purposes. D.C. Code §§ 14-305, 14-305(b)(1). *Hampton v. United States*, 340 A.2d 813, 1975 D.C. App. LEXIS 422 (1975).

Cross-examination for purpose of impeachment concerning prior offenses.

Trial court's imposed limit on defendant's impeachment of state's witness by only allowing witness to testify that he had taught victim how to sell drugs, rather than allowing victim to testify as to whether he had taught people younger than himself to sell drugs, did not violate defendant's Sixth Amendment right to confrontation in murder trial, where evidence was cumulative. *Mateen Abdus Samad v.*

United States, 812 A.2d 226, 2002 D.C. App. LEXIS 720 (2002), writ of certiorari denied by 538 U.S. 934, 123 S. Ct. 1600, 155 L. Ed. 2d 333, 2003 U.S. LEXIS 2369, 71 U.S.L.W. 3610 (2003).

Victim's admission that she had been expelled from neighborhood stores for shoplifting established the factual predicate for cross-examining the victim about her act of shoplifting, as element for impeachment through cross-examination of witness regarding prior bad act that has not resulted in criminal conviction, in prosecution for assault. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

Prior bad acts probative of truthfulness or untruthfulness, about which a witness may be cross-examined and thereby impeached, are those characterized by an element of deceit or deliberate interference with a court's ascertainment of truth. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

Evidence of defendant's prior crime was admissible in armed robbery trial, after defendant's counsel put defendant's intent at issue during her opening statement, in which she argued that defendant did not know that his co-defendant was going to rob a shoe store; it was defense, not the prosecution, that raised the issue of defendant's intent, and trial court limited the prior crimes evidence to the fact that the defendant had been stopped in a car with the co-defendant a month earlier, but did not permit evidence that the earlier stop was for another robbery. *Riley v. United States*, 790 A.2d 538, 2002 D.C. App. LEXIS 12 (2002).

Defendant charged in triple murder was not entitled to cross-examine prosecution witness concerning her earlier arrest on charges related to gun possession, even though those charges were dropped after police officer amended charges on police report, thus creating confusion as to proper charges, and even though same officer was on scene of triple murder when victim gave police witness's name; while defendant theorized that witness may have falsified testimony in return for continued favorable treatment in triple murder investigation, defendant failed to proffer any evidence of any ongoing relationship between witness and officer or of how witness might have benefitted from her earlier contact with him. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

A trial court does not abuse its discretion by precluding cross-examination to show bias where the connection between the facts cited by defense counsel and the proposed line of questioning is too speculative to support the questions. *Crutchfield v. United States*, 779 A.2d 307, 2001 D.C. App. LEXIS 182 (2001).

A witness may be cross-examined on a prior bad act that has not resulted in a criminal

conviction only where (1) the examiner has a factual predicate for the question, and (2) the bad act bears directly upon the veracity of the witness in respect to the issues involved in the trial. *Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

Medical expert could be impeached with evidence that he had been censured by neurological surgery association, even though expert had one level of appeal of that censure remaining. *Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

Although the opportunity to cross-examine a witness is a fundamental right, which is guaranteed in a criminal trial through the confrontation clause of the Sixth Amendment, the extent and scope of cross-examination is committed to the sound discretion of the trial court. *Moore v. United States*, 757 A.2d 78, 2000 D.C. App. LEXIS 188 (2000).

Trial court retains broad discretion generally to control scope and extent of cross-examination into alleged bad acts of witness, raised in order to impeach credibility. *Roundtree v. United States*, 581 A.2d 315, 1990 D.C. App. LEXIS 240 (1990).

Prior contempt conviction of defendant in drug sale case for violating provisions of pre-trial release order requiring that he remain free from drugs, qualified as a conviction for criminal offense involving dishonesty or false statement which could be admitted on cross-examination, despite claim that only conviction of crime following full criminal prosecution could be so introduced. D.C. Code 1981, § 14-305. *Thompson v. United States*, 571 A.2d 192, 1990 D.C. App. LEXIS 37 (1990).

Government may not pair questions about defendant's previous convictions for offenses similar to those charged with questions that elicit his general denial of charged crime. *Dorman v. United States*, 491 A.2d 455, 1984 D.C. App. LEXIS 587 (1984).

Government may not pair questions about similar previous convictions with question that elicit defendant's denial of key element of charged offense. *Dorman v. United States*, 491 A.2d 455, 1984 D.C. App. LEXIS 587 (1984).

Proscription against pairing of questions about similar previous convictions with questions that elicit denial of key element of charged offense, reaches impeachment following denial of element, not impeachment that follows inquiry merely into circumstances surrounding or relating to element. *Dorman v. United States*, 491 A.2d 455, 1984 D.C. App. LEXIS 587 (1984).

Fact that defendant opened the door to impeachment via previous convictions does not give prosecution license to exceed ordinarily applicable restrictions on prejudicial juxtaposition of impeachment; however, if manner in which defense counsel brought out previous

convictions reduced prejudicial effect of prosecutor's erroneous use of them, that factor would be considered in harmless error or plain error analysis. D.C. Code 1981, § 14-305(b)(1). *Dorman v. United States*, 491 A.2d 455, 1984 D.C. App. LEXIS 587 (1984).

Cross-examination was generally appropriate context in which to bring out previous convictions where defendant's defense hinged from his argument that he was telling the truth and that police officer who said he took radio was not. D.C. Code 1981, § 14-305(b)(1). *Dorman v. United States*, 491 A.2d 455, 1984 D.C. App. LEXIS 587 (1984).

Consistent with statutory requirement for proof of a prior conviction, prosecutor may not cross-examine a defendant about a prior conviction unless the prosecutor has a certificate under seal or trial judge has ruled in advance of the cross-examination or offer of proof *alunde*; once defendant has denied a conviction, no further questioning about that conviction shall be permitted except in accordance with such ruling by trial judge. D.C. Code 1981, §§ 14-305, 14-305(b, c). *Reed v. United States*, 485 A.2d 613, 1984 D.C. App. LEXIS 577 (1984).

Prosecutor was not required to lay foundation by cross-examining defendant about his credibility prior to impeaching him with prior convictions. D.C. Code 1981, §§ 14-305, 14-305(b). *Reed v. United States*, 485 A.2d 613, 1984 D.C. App. LEXIS 577 (1984).

For impeachment purposes, the government, on cross-examination, may not juxtapose questions concerning previous convictions for similar offenses with testimony by the defendant which is in essence a general denial that he committed an offense charged, nor may the government engage with defendant in a sequence of questions and answers in which the defendant's responses, while not general denials of an offense charged, deny as key element of an offense charged, and which are followed closely by repeated impeachment by reference to convictions for similar offenses. D.C. Code 1981, § 14-305. *Baptist v. United States*, 466 A.2d 452, 1983 D.C. App. LEXIS 471 (1983).

Where, on direct examination of defendant, defense counsel improperly questioned defendant concerning his previous guilty plea to charge arising out of purse snatching so as to raise inference that defendant would have acknowledged his guilt had he been guilty of charge for which he was on trial, trial court did not err in allowing Government opportunity to respond by questioning defendant on cross-examination concerning details of previous purse snatching, even though better practice might have been for trial court to have intervened as soon as defense counsel strayed toward forbidden area on direct examination. *Middleton v. United States*, 401 A.2d 109, 1979 D.C. App. LEXIS 393 (1979).

It was improper to cross-examine defendant to reveal an arrest for possession of a pistol without a license to contradict defendant's statement that he had never carried a weapon where defendant had not been convicted of the prior offense and where defendant's statement denying prior possession of weapon was made on cross-examination and not as part of his direct testimony. *Jackson v. United States*, 377 A.2d 1151, 1977 D.C. App. LEXIS 392 (1977).

Questions to defendant concerning his prior convictions of robbery and assault with intent to commit robbery were permissible. D.C. Code § 14-305(b). *Jenkins v. United States*, 374 A.2d 581, 1977 D.C. App. LEXIS 324 (1977), writ of certiorari denied by 434 U.S. 894, 98 S. Ct. 274, 54 L. Ed. 2d 182, 1977 U.S. LEXIS 3594 (1977).

No improper impeachment of defendant in second-degree murder prosecution took place when prosecutor inquired as to previous terms of imprisonment served by defendant only after prisoner had already testified to such confinements in his direct testimony. D.C. Code §§ 14-305(b), 22-2403. *Curry v. United States*, 322 A.2d 268, 1974 D.C. App. LEXIS 246 (1974).

Discretion of court.

Statute authorizing conviction-impeachment in trials of District of Columbia offenses mandates that court allow such evidence, and trial court has no discretion in the matter where conviction falls within the purview of the statute. D.C. Code § 14-305. *United States v. Edmonds*, 524 F.2d 62, 1975 U.S. App. LEXIS 11658 (C.A.D.C. 1975).

The trial court enjoys broad discretion to limit or preclude entirely the cross-examination of character witness regarding the defendant's prior convictions. *Di Giovanni v. United States*, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

The trial court has broad discretion in imposing reasonable limits on cross-examination to prevent, among other things, harassment, prejudice, confusion of the issues, or interrogation that is repetitive or only marginally relevant. *Riddick v. United States*, 806 A.2d 631, 2002 D.C. App. LEXIS 529 (2002).

Trial court is vested with discretion in controlling bias cross-examination. *Guzman v. United States*, 769 A.2d 785, 2001 D.C. App. LEXIS 69 (2001).

Where a proper foundation has not been laid for bias cross-examination, the trial court may exercise its discretion to preclude the inquiry. *Guzman v. United States*, 769 A.2d 785, 2001 D.C. App. LEXIS 69 (2001).

The trial court is vested with broad discretion in deciding whether to permit cross examination of a witness regarding a prior bad act. *Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

In determining whether to permit cross examination of a witness on a prior bad act, the trial court should assess both the sufficiency of the examiner's factual predicate and the relevance of the prior bad act to the witness's veracity; the court should also evaluate whether the probative value of the proffered cross examination is substantially outweighed by the danger of unfair prejudice. *Wagner v. Georgetown Univ. Med. Ctr.*, 768 A.2d 546, 2001 D.C. App. LEXIS 55 (2001).

Extent and scope of cross-examination are subject to broad discretion of trial judge. *Bobb v. United States*, 758 A.2d 958, 2000 D.C. App. LEXIS 207 (2000), writ of certiorari denied by 531 U.S. 1099, 121 S. Ct. 832, 148 L. Ed. 2d 713, 2001 U.S. LEXIS 552, 69 U.S.L.W. 3458 (2001).

Statute providing that impeachment evidence of prior conviction of witness "shall be admitted if offered" mandated that government be allowed to identify defendant's specific prior murder conviction to impeach defendant if he testified, and precluded trial judge from exercising discretion to limit government to impeachment by less specific reference to prior murder conviction such as by reference to "serious felony" as requested by defendant. D.C. Code 1981, § 14-305(b)(1). *Wilson v. United States*, 691 A.2d 1157, 1997 D.C. App. LEXIS 62 (1997).

Under statute requiring that evidence of witness' prior convictions be admitted if offered for purposes of impeachment, trial court has no discretion to exclude witness' prior convictions even though in particular case its prejudicial impact may outweigh its probative value. D.C. Code 1981, § 14-305(b)(1). *Zellers v. United States*, 682 A.2d 1118, 1996 D.C. App. LEXIS 163 (1996).

When defendant took stand, trial court was required to permit prosecution to attack his credibility by introducing recent prior convictions for felonies and for the purpose of impeaching his credibility. D.C. Code 1973, § 14-305. *Hill v. United States*, 434 A.2d 422, 1981 D.C. App. LEXIS 336 (1981), writ of certiorari denied by 454 U.S. 1151, 102 S. Ct. 1020, 71 L. Ed. 2d 307, 1982 U.S. LEXIS 432, 50 U.S.L.W. 3548 (1982).

Competency of a witness and credibility of a witness are two separate issues, and a competency finding is always made by the court. *Bryant v. United States*, 859 A.2d 1093, 2004 D.C. App. LEXIS 526 (2004).

Due process.

Government's failure to obtain and preserve the tape recording of defendant's telephone conversation to his former girlfriend did not constitute a Brady violation or deprive defendant of due process in prosecution for threatening another person, even though officer knew or

should have known that defendant's telephone call to the victim was recorded, absent showing of prejudice to defendant or bad faith by government in not obtaining and preserving the recording; defendant did not assert that the tape recording would have been exculpatory. *Robinson v. United States*, 825 A.2d 318, 2003 D.C. App. LEXIS 306 (2003).

Defendant's due process rights are implicated if previous convictions are introduced in way that does not sufficiently protect him from prejudice. *U.S. Const. Amends. 5, 14. Dorman v. United States*, 491 A.2d 455, 1984 D.C. App. LEXIS 587 (1984).

If government knows about a prior conviction of one of its witnesses, usable for impeachment under applicable statute, then Fifth Amendment due process requires government to disclose that conviction to defendant upon request. D.C. Code § 14-305; *U.S. Const. Amend. 5. Lewis v. United States*, 408 A.2d 303, 1979 D.C. App. LEXIS 515 (1979).

Given legislative finding inherent in certain statute, which governs impeachment of witnesses by evidence of conviction of crime, that use of impeachable convictions was likely to affect outcome of case, Brady-Agurs concept of due process, and incongruity of leaving decision about potential impact of impeachable convictions of government witnesses in hands of prosecutor, risk of Brady violation from failure to disclose impeachable convictions of government witnesses was so substantial that right to fair trial was implicated in absence of pretrial enforcement mechanism. D.C. Code § 14-305; *U.S. Const. Amend. 14. Lewis v. United States*, 408 A.2d 303, 1979 D.C. App. LEXIS 515 (1979).

Equal protection.

Even if fact that trial court informed defense counsel that, if defendant testified, prosecution was entitled to impeach his credibility by referring to prior convictions, and that no reference was made to codefendant's prior convictions resulted in decision by defendant not to testify and in codefendant's decision to take stand, such did not constitute denial of equal protection where codefendant's testimony did not incriminate defendant and where defendant and codefendant were both convicted. *Taylor v. United States*, 280 A.2d 79, 1971 D.C. App. LEXIS 187 (1971).

Ex post facto.

To extent that amendment of District of Columbia impeachment statute mandating admission into evidence of certain prior convictions if a defendant takes the stand is applied in trials for offenses committed before its effective date such application constitutes a prohibited ex post facto law; the particularized consideration under the prior discretionary

standard of whether prejudicial effect of impeachment outweighed probative relevance of prior conviction on issue of credibility was a protection of the magnitude necessary to invoke the ex post facto clause. *U.S. Const. art. 1, § 9, cl. 3; D.C. Code § 14-305. United States v. Henson*, 486 F.2d 1292, 1973 U.S. App. LEXIS 7496 (C.A.D.C. 1973).

Where offenses at issue were committed before effective date of amendment to District of Columbia impeachment statute mandating admission into evidence of certain prior convictions of a defendant if he takes the stand, as well as admission of such offenses as to witnesses, such retroactive application was unconstitutional as a prohibited ex post facto law. *U.S. Const. art. 1, § 9, cl. 3; D.C. Code §§ 14-305, 22-3204. United States v. Henson*, 486 F.2d 1292, 1973 U.S. App. LEXIS 7496 (C.A.D.C. 1973).

Where introduction of defendant's prior petit larceny conviction for purposes of impeachment did not deprive defendant of any defense, modify elements of proof, or deny him any substantial immunity which he had under "admissibility of prior convictions" statute prior to its amendment removing judicial discretion to exclude prior convictions, application of amended statute in trial for grand larceny offense, which was committed prior to effective date of amendment, did not violate ex post facto clause of Constitution. D.C. Code § 14-305; *U.S. Const. art. 1, § 9, cl. 3. Dixon v. United States*, 287 A.2d 89, 1972 D.C. App. LEXIS 331 (1972), writ of certiorari denied by 407 U.S. 926, 92 S. Ct. 2474, 32 L. Ed. 2d 813, 1972 U.S. LEXIS 2201 (1972).

Facts of prior crime.

Facts of prior crime may ordinarily be used to impeach criminal defendant by specific contradiction. D.C. Code § 14-305(b)(1). *Ward v. United States*, 386 A.2d 1180, 1978 D.C. App. LEXIS 375 (1978).

Facts of prior crime were admissible for impeachment purposes where impeached statement was volunteered by defendant and not in necessary response to cross-examination, unless potential impermissible prejudice engendered by such evidence outweighed its probative value. D.C. Code § 14-305(b)(1). *Ward v. United States*, 386 A.2d 1180, 1978 D.C. App. LEXIS 375 (1978).

While fact of prior conviction is admissible for impeachment purposes, facts of crime are not admissible unless, and to extent that, facts are independently relevant to issues at trial. D.C. Code § 14-305(b)(1). *Ward v. United States*, 386 A.2d 1180, 1978 D.C. App. LEXIS 375 (1978).

In general.

Under Code section sanctioning use of defendant's prior convictions for impeachment at

trial, court must, when defendant takes stand, permit prosecutor to attack his or her credibility by introducing recent prior convictions for felonies and other crimes involving dishonesty or false statement. D.C. Code 1981, § 14-305(b)(2). *Jones v. United States*, 516 A.2d 513, 1986 D.C. App. LEXIS 459 (1986).

General credibility of witness can be impeached by evidence that witness has been convicted of crime punishable by death or imprisonment in excess of year, or of crime involving dishonesty or false statement regardless of punishment; conviction can be established either through cross-examination or by extrinsic evidence. D.C. Code 1981, §§ 14-305, 14-305(b)(1), (c). *Sherer v. United States*, 470 A.2d 732, 1983 D.C. App. LEXIS 496 (1983), writ of certiorari denied by 469 U.S. 931, 105 S. Ct. 325, 83 L. Ed. 2d 262, 1984 U.S. LEXIS 4120, 53 U.S.L.W. 3324 (1984).

Instructions.

— In general.

Prejudicial effect of prosecutor's wrongful questioning of defendant concerning prior convictions was not cured by court's cautionary instruction given in course of its charge to jury. *United States v. Henry*, 528 F.2d 661, 1976 U.S. App. LEXIS 13310 (C.A.D.C. 1976).

In view of fact that evidence of plea of guilty to charge other than that on which defendant was being tried was not highly prejudicial, and where defendant did not request "immediate cautionary instruction" and instructions to jury constituted very fair charge with respect to use of prior conviction and evidence concerning defendant's involvement with narcotics, fact that immediate cautionary instruction was not given was not ground for relief. *United States v. Lee*, 509 F.2d 400, 1974 U.S. App. LEXIS 5476 (C.A.D.C. 1974), writ of certiorari denied by 420 U.S. 1006, 95 S. Ct. 1451, 43 L. Ed. 2d 765, 1975 U.S. LEXIS 1180 (1975).

Trial court's instructions concerning limited use of evidence of prior criminal convictions was not sufficient to cure prejudicial effect of the eliciting from defendant of testimony concerning prior convictions. D.C. Code § 14-305(b). *United States v. Carter*, 482 F.2d 738, 1973 U.S. App. LEXIS 8836 (C.A.D.C. 1973).

Court of Appeals would assume that when limiting instructions concerning use of prior convictions in connection with defendant's credibility contains realistic rather than theoretical distinctions, and when they are clearly and understandably delivered, they will reduce, if not dissipate, danger of unfairness and prejudice. D.C. Code 1981, § 14-305. *Thompson v. United States*, 546 A.2d 414, 1988 D.C. App. LEXIS 138 (1988).

Giving of curative instruction after improper impeachment of defendant with prior convictions,

which instruction informs jury that it may use previous convictions only to evaluate defendant's credibility would be only one factor in assessment of harm to defendant; other factors would include seriousness of prosecutor's error and weight of evidence of defendant's guilt; disagreeing with *Fields v. United States*, 396 A.2d 522. *Dorman v. United States*, 491 A.2d 455, 1984 D.C. App. LEXIS 587 (1984).

Trial court is not required, sua sponte, during course of trial immediately after defendant has been impeached by a prior conviction, to instruct jury that it must limit its consideration of such prior conviction only to issue of defendant's credibility and not as to his guilt or innocence of offense charged, and it is not plain error affecting substantial rights if defense counsel fails to request such an instruction from the bench and no immediate cautionary instruction is given. D.C. Code §§ 11-721(e), 14-305; U.S. Const. Amendments. 5, 6. *Dixon v. United States*, 287 A.2d 89, 1972 D.C. App. LEXIS 331 (1972), writ of certiorari denied by 407 U.S. 926, 92 S. Ct. 2474, 32 L. Ed. 2d 813, 1972 U.S. LEXIS 2201 (1972).

Where clear, comprehensible limiting instruction is given to jury, it cannot be said that the jury is so incapable of "mental gymnastics" and so prone to ignore or misinterpret appropriate limiting instructions concerning admissibility of evidence showing prior convictions for purpose of impeachment of credibility that Fifth and Sixth Amendments of Federal Constitution require trial court to retain some discretion to exclude any prior convictions meeting criteria set forth in statute allowing impeachment by prior conviction under certain circumstances. D.C. Code § 14-305; U.S. Const. Amendments. 5, 6. *Dixon v. United States*, 287 A.2d 89, 1972 D.C. App. LEXIS 331 (1972), writ of certiorari denied by 407 U.S. 926, 92 S. Ct. 2474, 32 L. Ed. 2d 813, 1972 U.S. LEXIS 2201 (1972).

— Sua sponte instructions.

Trial judge's failure to sua sponte give an immediate cautionary instruction when defendant's prior conviction was brought out was not prejudicial error and was not cognizable as plain error where immediately following impeachment defense counsel brought out on redirect that defendant had served his time, defense counsel made no mention of instructions to limit use of prior impeachment when trial court asked for any special instructions and, in contrast to the Government, defense counsel again raised prior conviction in his closing argument to note that it was only to be used in considering credibility. D.C. Code § 14-305. *United States v. Henson*, 486 F.2d 1292, 1973 U.S. App. LEXIS 7496 (C.A.D.C. 1973).

Showing to prosecution witness transcript of his guilty plea proceeding and asking him

whether person in squad car with him had sold PCP (phencyclidine) and marijuana to him involved attempt to refresh witness' recollection, rather than to impeach witness' testimony that he could not recall whether person in car was same person who had sold the drugs, and, thus, trial court was not required to give sua sponte limiting instruction. D.C. Code 1981, § 14-305(b)(1). *Jones v. United States*, 579 A.2d 250, 1990 D.C. App. LEXIS 205 (1990).

Since there is a danger that, when evidence of the defendant's other crimes is admitted for limited purpose, the jury will nevertheless misuse the evidence and infer improperly that the defendant committed the charged offense because he had committed other crimes in the past, the trial court should instruct the jury, sua sponte if necessary, as to the limited purpose for which such evidence is admitted and for which it is to be considered. *Sweet v. United States*, 449 A.2d 315, 1982 D.C. App. LEXIS 407 (1982).

Evidence of the assailants' statements about their other criminal activity, admitted for the limited purpose of proving the complainant's state of mind during her abduction, did not show that the defendant was the person who had engaged in other criminal activity and, since it was not introduced to prove, and did not prove, that other crimes actually had been committed, was not "other crimes" evidence as to which the trial court was required to give, sua sponte, a limiting instruction, and omission of instruction was not error, much less plain error. *Sweet v. United States*, 449 A.2d 315, 1982 D.C. App. LEXIS 407 (1982).

Better practice is for trial judges to caution jury about unreliability of an accomplice who testifies on behalf of Government even in absence of a request. *Fields v. United States*, 396 A.2d 522, 1978 D.C. App. LEXIS 372 (1978).

Trial court did not err in failing to sua sponte instruct, in prosecution for assault with a dangerous weapon and burglary in the second degree, on lesser included offenses of simple assault, carrying a dangerous weapon, and unlawful entry. D.C. Code §§ 22-502, 22-1801(b), 22-2201. *Jackson v. United States*, 377 A.2d 1151, 1977 D.C. App. LEXIS 392 (1977).

Juvenile arrests and convictions.

When juvenile is tried and convicted as an adult, his conviction is treated as adult conviction for purposes of rule of evidence governing admissibility of prior conviction for impeachment purposes. Fed. Rules Evid. Rule 609(d), 18 U.S.C. *United States v. Lipscomb*, 702 F.2d 1049, 1983 U.S. App. LEXIS 29758 (C.A.D.C. 1983).

Under statute enabling impeachment of witness by proof that he has been convicted of criminal offenses under stated conditions, conviction suffered by defendant in North Carolina

at age of 16 was not inadmissible merely because, had offense occurred in the District of Columbia, defendant would not have been subjected to criminal prosecution as an adult. D.C. Code 11-914, 14-305, 14-305(b)(2)(A)(ii), (b)(2)(B), 16-2307, 16-2307(a)(1). *United States v. Edmonds*, 524 F.2d 62, 1975 U.S. App. LEXIS 11658 (C.A.D.C. 1975).

Trial court's failure to direct government, at defendant's request, that it could not use defendant's felony conviction, after waiver from juvenile court, to impeach defendant should he take stand was not abuse of discretion under circumstances, in view of inadequacy of defendant's presentation of request. D.C. Code 1961, § 14-305. *Hood v. United States*, 365 F.2d 949, 1966 U.S. App. LEXIS 5635 (C.A.D.C. 1966).

The Sixth Amendment does not require the trial court to permit impeachment with juvenile adjudications unless they can be used to establish bias, not merely to challenge general credibility. *Walls v. United States*, 773 A.2d 424, 2001 D.C. App. LEXIS 120 (2001), writ of certiorari denied by 534 U.S. 1149, 122 S. Ct. 1112, 151 L. Ed. 2d 1006, 2002 U.S. LEXIS 1111, 70 U.S.L.W. 3516 (2002).

Evidence of a prior conviction usually is inadmissible to impeach general credibility if the conviction resulted from a juvenile adjudication. *Walls v. United States*, 773 A.2d 424, 2001 D.C. App. LEXIS 120 (2001), writ of certiorari denied by 534 U.S. 1149, 122 S. Ct. 1112, 151 L. Ed. 2d 1006, 2002 U.S. LEXIS 1111, 70 U.S.L.W. 3516 (2002).

A defendant's Sixth Amendment right to confront adverse witnesses with evidence of bias must prevail over the policy of protecting the anonymity of juvenile offenders. *Walls v. United States*, 773 A.2d 424, 2001 D.C. App. LEXIS 120 (2001), writ of certiorari denied by 534 U.S. 1149, 122 S. Ct. 1112, 151 L. Ed. 2d 1006, 2002 U.S. LEXIS 1111, 70 U.S.L.W. 3516 (2002).

Murder defendant was not entitled to present evidence of witness's juvenile adjudication for second degree murder for purposes of impeaching witness's credibility. *Walls v. United States*, 773 A.2d 424, 2001 D.C. App. LEXIS 120 (2001), writ of certiorari denied by 534 U.S. 1149, 122 S. Ct. 1112, 151 L. Ed. 2d 1006, 2002 U.S. LEXIS 1111, 70 U.S.L.W. 3516 (2002).

A jury verdict of guilty on charge of possession of a prohibited weapon was not a "conviction" that could be used to impeach defendant, even though all posttrial motions had been denied and only formality of sentencing remained to be done. D.C. Code 1981, §§ 14-305, 22-3214(b). *Franklin v. United States*, 555 A.2d 1010, 1989 D.C. App. LEXIS 42 (1989).

For the narrow evidentiary purpose of impeachment, individual's commitment for study under the Youth Corrections Act could be used for impeachment purposes. 18 U.S.C. (1982

Ed.) § 5010(e); D.C. Code 1981, § 14-305. *Stewart v. United States*, 490 A.2d 619, 1985 D.C. App. LEXIS 342 (1985).

Not all juvenile delinquency adjudications are unavailable for impeachment purposes. *Lewis v. United States*, 393 A.2d 109, 1978 D.C. App. LEXIS 339 (1978).

Lapse of time since punishment.

Where most recent conviction of complaining witness occurred within ten-year statutory period, evidence of conviction beyond ten-year period could be received to impeach witness. D.C. Code § 14-305(b)(1)(B)(ii). *United States v. Morgan*, 476 F.2d 928, 1973 U.S. App. LEXIS 11055 (C.A.D.C. 1973).

Lapse of time since witness committed prior offense is matter which goes to her credibility and as such is within the domain of the jury to consider in determining the weight to be given such evidence. *United States v. Scarborough*, 452 F.2d 1378, 1971 U.S. App. LEXIS 7284 (C.A.D.C. 1971).

Prior conviction, even one involving fraud or stealing, if it occurred long before and has been followed by legally blameless life, should generally be excluded for impeachment purposes on ground of remoteness. D.C. Code § 14-305. *Gordon v. U.S.*, 383 F.2d 936, 1967 U.S. App. LEXIS 5100 (C.A.D.C. 1967).

Trial court did not have any discretion, in sex discrimination action against owner of employment agency, to preclude plaintiffs' impeachment of owner with owner's prior criminal conviction for conspiracy to counterfeit or alter currency, where owner's sentence for such conviction ended eight years before commencement of sex discrimination trial. D.C. Code 1981, § 14-305(b)(2)(B). *Molovinsky v. Fair Empl. Council*, 683 A.2d 142, 1996 D.C. App. LEXIS 194 (1996).

In 1976 prosecution for armed robbery, defendant's robbery convictions from 1963 and 1952 were admissible for impeachment purposes, since minimum sentence imposed following 1963 conviction expired within ten years of trial. D.C. Code §§ 14-305, 14-305(b), (b)(2)(B). *Glass v. United States*, 395 A.2d 796, 1978 D.C. App. LEXIS 369 (1978).

Mitigation or explanation of conviction evidence.

If one is lawfully on premises exercising First Amendment rights, and refuses to leave upon lawful demand to do so and is thereupon convicted of unlawful entry, he or she would have an opportunity to rehabilitate credibility by making a "limited explanation" of circumstances supporting conviction if government sought to use it for impeachment. D.C. Code §§ 14-305, 22-3102; U.S. Const. Amend. 1. *Bates v. United States*, 403 A.2d 1159, 1979 D.C. App. LEXIS 419 (1979).

Defendant may explain circumstances of prior conviction to mitigate its apparent effect on his credibility. *Jenkins v. United States*, 374 A.2d 581, 1977 D.C. App. LEXIS 324 (1977), writ of certiorari denied by 434 U.S. 894, 98 S. Ct. 274, 54 L. Ed. 2d 182, 1977 U.S. LEXIS 3594 (1977).

Pendency of appeal.

While "pendency" of appeal from prior conviction will not render evidence of that conviction inadmissible for impeachment purposes, appeal is not "pending" within meaning of applicable statute if decision of appellate court reversing conviction has been published. D.C. Code § 14-305(d). *Hale v. U.S.*, 361 A.2d 212, 1976 D.C. App. LEXIS 336 (1976).

Power of Congress.

Subject to possible due process limitations, Congress is capable of declaring that public interest is best served, in trial of District of Columbia Code Crimes, by assuring the jury an opportunity to weigh the credibility of the testimony of a criminal defendant in the light of his prior criminal record by directing that evidence of such offenses be admitted if offered. D.C. Code § 14-305. *United States v. Hairston*, 495 F.2d 1046, 1974 U.S. App. LEXIS 9333 (C.A.D.C. 1974).

Powers of Court of Appeals.

Court of Appeals is not free to decide whether danger of prejudice to defendant warrants barring impeachment by previous convictions; Congress has prescribed that certain convictions are relevant to fact finder's credibility determinations and Court of Appeals is bound by Congress' policy decision. *Dorman v. United States*, 491 A.2d 455, 1984 D.C. App. LEXIS 587 (1984).

It is within province of Court of Appeals to require procedures that minimize risk that jury will misuse evidence of previous convictions which Congress has declared admissible. *Dorman v. United States*, 491 A.2d 455, 1984 D.C. App. LEXIS 587 (1984).

If burdens on government imposed by what due process requires in implementing statute governing impeachment of witnesses by evidence of conviction of crime indicates that use of impeachable convictions should be generally reviewed, from public's as well as defendant's viewpoint, that review should be undertaken initially by legislature, not courts. D.C. Code § 14-305. *Lewis v. United States*, 408 A.2d 303, 1979 D.C. App. LEXIS 515 (1979).

Practice and procedure, generally.

That defendant early on direct examination acknowledged that he had been previously convicted did not foreclose him from attacking prior ruling that evidence of prior conviction was admissible, where such acknowledgment

by defendant obviously was attempt to soften impact of revelation which government was expected to make. D.C. Code § 14-305. *United States v. Edmonds*, 524 F.2d 62, 1975 U.S. App. LEXIS 11658 (C.A.D.C. 1975).

Statute relating to admissibility of fact of conviction of witness could not be first attacked on appeal. D.C. Code § 14-305. *United States v. Williams*, 436 F.2d 287, 1970 U.S. App. LEXIS 6663 (C.A.D.C. 1970).

The burden of establishing the existence of the prior conviction rests with the government; however, once the government has set forth a prima facie case, either by producing official documents or by providing other credible evidence, the burden of going forward shifts to the defendant who may present contrary evidence. *Haley v. United States*, 799 A.2d 1201, 2002 D.C. App. LEXIS 312 (2002).

In order to overcome an objection to a question posed to expose bias, the questioner must proffer facts sufficient to show that the witness is biased in the manner asserted and to allow the trial court to determine whether the question is probative of bias. *Guzman v. United States*, 769 A.2d 785, 2001 D.C. App. LEXIS 69 (2001).

Proscription against pairing questions about defendant's prior convictions for offenses similar to those on trial with questions which elicit denial of crime charged or denial of key element of offense does not pertain solely to circumstances surrounding commission of offense. D.C. Code 1981, § 14-305(b)(1). *Harris v. United States*, 618 A.2d 140, 1992 D.C. App. LEXIS 316 (1992).

When party establishing a conviction by means of cross-examination is met with a denial, party posing the question must be prepared to prove the conviction. D.C. Code 1981, §§ 14-305, 14-305(b). *Reed v. United States*, 485 A.2d 613, 1984 D.C. App. LEXIS 577 (1984).

Prior arrests.

Arrests are the proper subject of cross-examination of a character witness, not to impeach the credibility of the defendant, if he testifies, but to test the probative value of the witness' testimony. *Di Giovanni v. United States*, 810 A.2d 887, 2002 D.C. App. LEXIS 655 (2002).

Defendant was not entitled to impeach Government witness' credibility with prior arrests. *Reed v. United States*, 452 A.2d 1173, 1982 D.C. App. LEXIS 480 (1982), writ of certiorari denied by 464 U.S. 839, 104 S. Ct. 132, 78 L. Ed. 2d 127, 1983 U.S. LEXIS 1372, 52 U.S.L.W. 3264 (1983).

Mere fact of an arrest is of no probative value as to the guilt or innocence of the person arrested. *Jackson v. United States*, 377 A.2d 1151, 1977 D.C. App. LEXIS 392 (1977).

Prior law.

Principal consideration under the discretion-

ary standard of admissibility of prior convictions, as such standard existed prior to amendment of impeachment statute to mandate admission of certain prior convictions, was whether the prejudicial effect of impeachment far outweighed the probative relevance of a prior conviction to issue of credibility. D.C. Code § 14-305. *United States v. Henson*, 486 F.2d 1292, 1973 U.S. App. LEXIS 7496 (C.A.D.C. 1973).

Purpose.

The reason for exposing defendant's prior criminal record is to attack his character and to call into question his reliability for truth telling. D.C. Code § 14-305. *Gordon v. U.S.*, 383 F.2d 936, 1967 U.S. App. LEXIS 5100 (C.A.D.C. 1967).

Legitimate purpose of impeachment is not to show that the accused who takes the stand is a "bad" person but rather to show background facts which bear directly on whether jurors ought to believe him rather than other and conflicting witnesses. D.C. Code § 14-305. *Gordon v. U.S.*, 383 F.2d 936, 1967 U.S. App. LEXIS 5100 (C.A.D.C. 1967).

When criminal defendant testifies in his own defense, his testimony is generally subject to impeachment by use of his prior convictions for purpose of showing him as lacking credibility. D.C. Code § 14-305(b)(1). *Ward v. United States*, 386 A.2d 1180, 1978 D.C. App. LEXIS 375 (1978).

Statute permitting impeachment by proof of criminal offense involving "dishonesty or false statement" was intended to exclude primarily those offenses resulting from passion and short temper. D.C. Code § 14-305(b)(1). *Durant v. United States*, 292 A.2d 157, 1972 D.C. App. LEXIS 416 (1972), writ of certiorari denied by 409 U.S. 1127, 93 S. Ct. 946, 35 L. Ed. 2d 259, 1973 U.S. LEXIS 3691 (1973).

Purpose of amendment.

In statute providing for conviction-impeachment in trials of District of Columbia offenses, amendment shifting language from "crime" to "criminal offense" was intended not to constrict but to broaden category of convictions usable under the statute. D.C. Code §§ 11-1101, 14-305. *United States v. Edmonds*, 524 F.2d 62, 1975 U.S. App. LEXIS 11658 (C.A.D.C. 1975).

Remand.

Where application by trial court of District of Columbia statute providing for mandatory witness impeachment by conviction had been improper because indictment had charged both District of Columbia Code offense and United States Code offense, and witness-impeachment statute was not operable as to latter offense, defendant appellant was entitled to remand of case with directions for district court to review admissibility of prior conviction in light of dis-

cretion available to it, and such remand was available despite fact that defendant had been acquitted by jury on federal count. D.C. Code §§ 11-502, 14-305, 33-402; Comprehensive Drug Abuse Prevention and Control Act of 1970, § 401, 21 U.S.C. § 841. *United States v. Belt*, 514 F.2d 837, 1975 U.S. App. LEXIS 14203 (C.A.D.C. 1975).

Review.

In view of overwhelming case made out by prosecution against defendants in robbery prosecution, trial court's error in allowing impeachment of one defendant by evidence of prior conviction for simple assault, such crime not being a felony and not involving dishonesty or false statement, was harmless. D.C. Code §§ 14-305, 22-2901. *United States v. Belt*, 514 F.2d 837, 1975 U.S. App. LEXIS 14203 (C.A.D.C. 1975).

Under statute authorizing attack upon credibility of witnesses by admission of prior "convictions," it was error to admit evidence of defendant's plea of guilty in different prosecution but where testimony as to guilty plea was largely cumulative to testimony which defendant himself introduced, error was harmless. D.C. Code § 14-305. *United States v. Lee*, 509 F.2d 400, 1974 U.S. App. LEXIS 5476 (C.A.D.C. 1974), writ of certiorari denied by 420 U.S. 1006, 95 S. Ct. 1451, 43 L. Ed. 2d 765, 1975 U.S. LEXIS 1180 (1975).

Exclusion of evidence of conviction of complaining witness of making false report to police, which evidence was admissible under statute, was reversible error in prosecution for first-degree burglary, armed robbery, and assault with a deadly weapon, where honesty and veracity of complaining witness was at issue and exclusion may have affected verdict. D.C. Code § 14-305(b)(1)(B)(ii). *United States v. Morgan*, 476 F.2d 928, 1973 U.S. App. LEXIS 11055 (C.A.D.C. 1973).

A narcotics conviction is not such a hideous crime that its introduction at trial for impeachment purposes automatically becomes so prejudicial that a defendant is thereby denied his right to a fair trial. *United States v. McIntosh*, 426 F.2d 1231, 1970 U.S. App. LEXIS 10357 (C.A.D.C. 1970).

Use of a more recent narcotics conviction for impeachment purposes against defendant in prosecution for mail theft, as opposed to more remote larceny after trust conviction that carried inference of propensity to commit crime charged did not affect any substantial rights of defendant and erroneous allowance of prosecution to select conviction it was going to use for impeachment purposes did not constitute reversible error. D.C. Code § 14-305. *United States v. McIntosh*, 426 F.2d 1231, 1970 U.S. App. LEXIS 10357 (C.A.D.C. 1970).

Admission, for impeachment purposes, of prior conviction, entered on plea of guilty, for misdemeanor of taking property without right did not constitute reversible error in robbery prosecution. D.C. Code § 14-305. *Williams v. United States*, 409 F.2d 471, 1969 U.S. App. LEXIS 8811 (C.A.D.C. 1969).

Defendant's taking stand does not preclude his raising point on appeal as to whether trial judge abused discretion in permitting introduction of prior conviction to impeach defendant's credibility when he testified at his trial. D.C. Code § 14-305. *Jones v. United States*, 402 F.2d 639, 1968 U.S. App. LEXIS 6161 (C.A.D.C. 1968).

Defendant's failure to testify at trial did not waive his appellate argument that the trial court erred by concluding that the State presented evidence sufficient to establish the validity of defendant's past assault conviction, and thus "link" the assault conviction with defendant's previous murder conviction which allowed admission of the murder conviction as impeachment evidence, where defense counsel argued in the trial court against the use of defendant's assault conviction for impeachment purposes. *Haley v. United States*, 799 A.2d 1201, 2002 D.C. App. LEXIS 312 (2002).

Fact that "other crimes" evidence in form of testimony that defendant had set fires before in his father's house was elicited on cross-examination by defense counsel did not preclude defendant from arguing that such testimony should be basis for reversal of his conviction for felony malicious destruction of property, alleging that defendant again set that house on fire; initial question that elicited response was designed to delve into witness's possible bias, it required simple yes or no response and did not invite inflammatory remark given, and even though defense counsel repeated witness's statement when questioning resumed, counsel had right to attempt to rehabilitate defendant by showing witness's bias, in light of trial court's ruling that it would not give instruction or declare mistrial at that time. *Coleman v. United States*, 779 A.2d 297, 2001 D.C. App. LEXIS 183 (2001).

In reviewing whether a trial court abused its discretion in restricting the cross-examination of a witness to impeach his general credibility with a prior juvenile adjudication, the appellate court must determine whether a reasonable jury could have arrived at a different outcome, not what the trial court itself would have concluded as trier. *Walls v. United States*, 773 A.2d 424, 2001 D.C. App. LEXIS 120 (2001), writ of certiorari denied by 534 U.S. 1149, 122 S. Ct. 1112, 151 L. Ed. 2d 1006, 2002 U.S. LEXIS 1111, 70 U.S.L.W. 3516 (2002).

Prosecutor had good faith belief he could establish prior convictions for felony carrying a dangerous weapons (CDW), as factual predi-

cate for impeaching defendant on cross-examination in prosecution for assault with dangerous weapon by asking about prior convictions, where prosecutor had based his questions on Pretrial Services Agency report indicating that defendant had two prior felony CDW convictions, though in fact defendant had been previously convicted of carrying a pistol without a license, unregistered firearm, and unlawful possession of ammunition. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Allowing prosecution to introduce, on rebuttal, certification of defendant's prior convictions for carrying a pistol without a license (CPWL), unregistered firearm, and unlawful possession of ammunition, was not plain error in prosecution for assault with dangerous weapon, though prosecutor's impeachment of defendant on cross-examination had been based on the factual predicate of prior convictions for felony carrying a dangerous weapons (CDW), because CDW was closely related to CPWL. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Any error in trial court's failure to intervene, sua sponte, to prevent prosecutor from impeaching defendant by cross-examining him about his prior convictions, and to prevent prosecutor from arguing in closing and rebuttal that defendant had lied, was harmless, in prosecution for assault with dangerous weapon, where jury heard significant damaging testimony from defendant that he was a drug abuser who had been convicted of drug-related offenses. *Thomas v. United States*, 772 A.2d 818, 2001 D.C. App. LEXIS 114 (2001), writ of certiorari denied by 543 U.S. 913, 125 S. Ct. 233, 160 L. Ed. 2d 193, 2004 U.S. LEXIS 6169, 73 U.S.L.W. 3214 (2004).

Any error, in sexual abuse prosecution arising from alleged assault on then-13-year-old complaining witness, in ruling that precluded defense from cross-examining complaining witness about questions posed by her mother when she told mother of a separate alleged assault by defendant's father, was not prejudicial so as to warrant reversal of conviction; defense still had considerable leeway to explore theory that mother influenced the filing of a false report against defendant, and defense failed to call mother as witness despite having opportunity to do so. *Guzman v. United States*, 769 A.2d 785, 2001 D.C. App. LEXIS 69 (2001).

Reversal based on an improper limiting of cross-examination is warranted only if prejudice results from the improper ruling. *Guzman*

v. United States, 769 A.2d 785, 2001 D.C. App. LEXIS 69 (2001).

Any error in admitting statements that codefendant made to Government witnesses under co-conspirator hearsay exception in joint trial was harmless, where Government's other proof was compelling and did not depend upon objectionable statements. *McCoy v. United States*, 760 A.2d 164, 2000 D.C. App. LEXIS 264 (2000), writ of certiorari denied by 532 U.S. 987, 121 S. Ct. 1636, 149 L. Ed. 2d 496, 2001 U.S. LEXIS 3147, 69 U.S.L.W. 3672 (2001), writ of certiorari denied by 533 U.S. 909, 121 S. Ct. 2257, 150 L. Ed. 2d 243, 2001 U.S. LEXIS 4446, 69 U.S.L.W. 3763 (2001), writ of certiorari denied by 534 U.S. 900, 122 S. Ct. 227, 151 L. Ed. 2d 163, 2001 U.S. LEXIS 6714, 70 U.S.L.W. 3241 (2001), writ of certiorari denied by 534 U.S. 1005, 122 S. Ct. 486, 151 L. Ed. 2d 399, 2001 U.S. LEXIS 10160, 70 U.S.L.W. 3316 (2001).

Prosecutor's unobjected-to improper use of defendant's prior assault conviction to convey impression that defendant likely committed offense charged was not plain error; court immediately gave cautionary instruction explaining that defendant's prior convictions could be used only in evaluating his credibility and not as evidence of guilt, court gave similar instruction in final instructions, and there was substantial evidence of defendant's guilt. *Harris v. United States*, 618 A.2d 140, 1992 D.C. App. LEXIS 316 (1992).

Ruling that Government could impeach assault defendant with evidence that jury had found him guilty of two felonies for which he had not yet been sentenced was prejudicial error where defendant declined to testify because of ruling; witness may not be impeached with prior guilty verdict absent judgment of conviction premised on sentence. D.C. Code 1981, § 14-305. *Langley v. United States*, 515 A.2d 729, 1986 D.C. App. LEXIS 448 (1986).

Error arising from admission of defendant's prior conviction of threats for purposes of impeachment was harmless, where impeachment did not relate to element of the offense, but to collateral matter, Government's evidence was very strong and error was not compounded by improper sequencing of cross-examination questions. D.C. Code 1981, §§ 14-305(b)(1), (b)(1)(A, B), 22-507. *James v. United States*, 514 A.2d 793, 1986 D.C. App. LEXIS 416 (1986).

Previous conviction impeachment does not involve constitutional rights except in remote sense so that error is harmless if court can say with fair assurance that judgment was not substantially swayed by error. *Dorman v. United States*, 491 A.2d 455, 1984 D.C. App. LEXIS 587 (1984).

Even if defendant had objected to erroneous use of his previous convictions to impeach him,

error was harmless in light of overwhelming evidence and giving of cautionary instructions. *Dorman v. United States*, 491 A.2d 455, 1984 D.C. App. LEXIS 587 (1984).

Where defendant's own attorney introduced facts of prior convictions on direct examination of defendant and reiterated them on redirect, prosecutor briefly cross-examined defendant as to prior convictions in purely a credibility context, and trial court gave cautionary instruction that prior convictions were not to be considered on issue of defendant's guilt of crime charged, prosecutor's questioning of defendant as to prior convictions was not plain error which would require reversal, but was in fact permissible use of prior convictions as authorized by law. D.C. Code 1981, § 14-305(b). *Dorman v. United States*, 460 A.2d 986, 1983 D.C. App. LEXIS 379 (1983).

Questions which concerned defendant's prior conviction for unregistered possession of a firearm and which were asked by prosecutor immediately after defendant denied possessing a gun on occasion of offense charged likely gave jury impression that evidence of defendant's prior conviction was being offered to rebut defendant's denial that he possessed a gun at time in question and, as such, was plainly erroneous. *Fields v. United States*, 396 A.2d 522, 1978 D.C. App. LEXIS 372 (1978).

In prosecution for armed robbery, Government was not required to anticipate that codefendant's counsel might use defendant's prior convictions to impeach defendant, and therefore, defendant's impeachment by codefendant's counsel did not require reversal of defendant's conviction. *Glass v. United States*, 395 A.2d 796, 1978 D.C. App. LEXIS 369 (1978).

Trial court's failure to permit defendant to testify on direct examination as to his prior convictions was harmless error, in view of fact that it was highly unlikely that jury's appraisal of defendant's credibility was influenced by fact that his prior convictions were brought out on cross rather than direct examination. *Lewis v. United States*, 393 A.2d 109, 1978 D.C. App. LEXIS 339 (1978).

Refusal to allow accused and two other defense witnesses to testify on direct examination as to their respective prior criminal conviction was error in prosecution for possession of amphetamine, but the error was harmless, in light of fact that the defense testimony was inconsistent, that there was substantial evidence supporting conviction and that it was highly doubtful as to whether admission of such direct testimony would have altered jury's evaluation of the credibility of accused and the two witnesses. D.C. Code §§ 11-721(e), 14-102, 14-305, 33-702(a)(4). *Kitt v. United States*, 379 A.2d 973, 1977 D.C. App. LEXIS 267 (1977).

Since there was no issue about the fact that defendant had a gun in his possession at time of

the offense, error in permitting defendant to be cross-examined concerning prior arrest for possession of a pistol without a license was harmless. *Jackson v. United States*, 377 A.2d 1151, 1977 D.C. App. LEXIS 392 (1977).

Although trial court erred in admitting evidence of defendant's prior robbery conviction for purposes of impeachment where such conviction had, at time of trial, already been reversed, error was harmless where evidence of defendant's guilt was overwhelming. D.C. Code § 14-305(d). *Hale v. U.S.*, 361 A.2d 212, 1976 D.C. App. LEXIS 336 (1976).

Refusal to rule on whether defendant's prior conviction of attempted house breaking was an impeachable one was improper, but error was harmless, in that since such conviction was admissible for impeachment purposes, defendant's decision whether to testify would have been same if trial judge had expressly ruled on its admissibility. *Hampton v. United States*, 340 A.2d 813, 1975 D.C. App. LEXIS 422 (1975).

In prosecution for assault and threats to do bodily harm, admission of defendant's prior conviction of manslaughter was not error, where at time prior conviction was introduced and during final instructions trial court informed jury that it should consider the conviction only in evaluating defendant's credibility. D.C. Code §§ 14-305(b)(1), 22-504, 22-507. *Davis v. United States*, 313 A.2d 884, 1974 D.C. App. LEXIS 342 (1974).

Use of evidence for other than impeachment purposes.

Trial court erred when it permitted prosecutor to question defendant concerning prior convictions where effect of such questioning was not limited to impeachment of defendant's credibility but invited jury to consider prior convictions as suggestion of defendant's guilt. *United States v. Henry*, 528 F.2d 661, 1976 U.S. App. LEXIS 13310 (C.A.D.C. 1976).

In permitting evidence of prior conviction to impeach a defendant when he testifies, the statute furnishes no foundation for its use for any other purpose and care on part of court is required to confine such evidence to the permissible purpose. D.C. Code § 14-305(b). *United States v. Carter*, 482 F.2d 738, 1973 U.S. App. LEXIS 8836 (C.A.D.C. 1973).

Statute, which permits evidence of prior conviction to be admitted for purpose of attacking defendant's credibility when the defendant testified in his own behalf, does not permit use of the evidence as proof of guilt. D.C. Code § 14-305(b). *United States v. Carter*, 482 F.2d 738, 1973 U.S. App. LEXIS 8836 (C.A.D.C. 1973).

A prosecutor must not impeach a defendant with prior convictions in a manner which suggests to the jury that because of his prior criminal acts, defendant is guilty of the crimes

charged. *Ford v. United States*, 487 A.2d 580, 1984 D.C. App. LEXIS 584 (1984).

The test for determining whether previous conviction impeachment evidence is improper is whether the prosecutor's reference to the defendant's prior convictions during his cross-examination can be intended only to suggest to the jury that defendant is guilty of the crime charged because of his previous conviction or convictions. D.C. Code 1981, § 14-305. *Baptist v. United States*, 466 A.2d 452, 1983 D.C. App. LEXIS 471 (1983).

Validity.

District of Columbia statute providing for mandatory admission of witness impeachment by conviction was not unconstitutional. D.C. Code § 14-305; U.S. Const. Amends. 5, 6, 14. *United States v. Belt*, 514 F.2d 837, 1975 U.S. App. LEXIS 14203 (C.A.D.C. 1975).

Statute providing that a prior conviction of a felony "shall be admitted" to impeach credibility of the witness is constitutional. D.C. Code § 14-305(b)(1). *Davis v. United States*, 313 A.2d 884, 1974 D.C. App. LEXIS 342 (1974).

Assuming proper instructions concerning jury's consideration of evidence of prior convictions, potential for prejudice is outweighed by probative value of prior convictions as it relates to credibility, and statute allowing admission of evidence of prior convictions to impeach credibility was not unconstitutional as denying due process and trial by impartial jury in violation of Fifth and Sixth Amendments. D.C. Code § 14-305; U.S. Const. Amends. 5, 6. *Dixon v. United States*, 287 A.2d 89, 1972 D.C. App. LEXIS 331 (1972), writ of certiorari denied by 407 U.S. 926, 92 S. Ct. 2474, 32 L. Ed. 2d 813, 1972 U.S. LEXIS 2201 (1972).

§ 14-306. Spouse or domestic partner.

(a) In civil and criminal proceedings, a spouse or domestic partner is competent but not compellable to testify for or against their spouse or domestic partner.

(b) In civil and criminal proceedings, a spouse or domestic partner is not competent to testify as to any confidential communications made by one to the other during the marriage or the domestic partnership.

(b-1) Notwithstanding subsections (a) and (b) of this section, a spouse or domestic partner is both competent and compellable to testify against his or her spouse or domestic partner as to both confidential communications made by one to the other during the marriage or domestic partnership and any other matter in:

(1) A criminal or delinquency proceeding where one spouse or domestic partner is charged with committing:

(A) Intimate partner violence as defined in § 16-1001(7) if the spouse or domestic partner has previously refused to testify in a criminal or delinquency proceeding against the same spouse or domestic partner for an offense against him or her; or

(B) An offense against a child, minor, or vulnerable adult who is:

(i) In the custody of or resides temporarily or permanently in the household of one of the spouses or domestic partners; or

(ii) Related by blood, marriage, domestic partnership, or adoption to one of the spouses or domestic partners;

(2) A civil proceeding involving the abuse, neglect, abandonment, custody, or dependency of a child, minor, or vulnerable adult who is:

(A) In the custody of or resides temporarily or permanently in the household of one of the spouses or domestic partners; or

(B) Related by blood, marriage, domestic partnership, or adoption to one of the spouses or domestic partners; or

(3) A criminal or delinquency proceeding where one spouse or domestic

partner is charged with committing a crime jointly with the other spouse or domestic partner.

(b-2) Notwithstanding subsections (a) and (b) of this section, when one spouse or domestic partner is charged with committing a crime that occurred prior to the marriage of the spouses or prior to the filing of a domestic partnership agreement, the other spouse or domestic partner is both competent and compellable to testify against his or her spouse or domestic partner as to the crime, communications made by one to the other, and any other matter that occurred prior to the marriage of the spouses, or prior to the filing of the domestic partnership agreement.

(b-3) The burden is upon the person asserting a privilege under this section to establish that it exists.

(c) For the purposes of this section, the term:

(1) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(2) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(3) "Refused to testify" means that the witness spouse or domestic partner has:

(A) Submitted an affidavit or other writing stating that she or he will not testify before a grand jury or in court;

(B) Taken the stand in the grand jury or in any court proceeding and asserted his or her privilege under this section not to testify; or

(C) Intentionally failed to appear in response to a subpoena.

(Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1; Apr. 4, 2006, D.C. Law 16-79, § 2(b), 53 DCR 1035; Dec. 10, 2009, D.C. Law 18-88, § 206, 56 DCR 7413.)

Cross references. — Family division proceedings, privilege under this section, see § 16-2359.

Neglected children proceedings, waiver of privilege, see § 4-1321.05.

Section references. — This section is referred to in §§ 4-1321.05, 16-1005, and 16-2359.

Prior Codifications. — 1981 Ed., § 14-306. 1973 Ed., § 14-306.

Effect of amendments. — D.C. Law 16-79 rewrote the section.

D.C. Law 18-88 added subsecs. (b-1), (b-2), (b-3), and (c)(3).

Emergency legislation. — For temporary (90 day) amendment of section, see § 206 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 206 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

Legislative history of Law 16-79. — Law 16-79, the "Domestic Partnership Equality Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-52 which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on December 6, 2005, and January 4, 2006, respectively. Signed by the Mayor on January 26, 2006, it was assigned Act No. 16-265 and transmitted to both Houses of Congress for its review. D.C. Law 16-79 became effective on April 4, 2006.

Legislative history of Law 18-88. — Law 18-88, the "Omnibus Public Safety and Justice Amendment Act of 2009", as introduced in Council and assigned Bill No. 18-151, which was referred to the Committee on Public Safety and the Judiciary. The bill as adopted on first and second readings on June 30, 2009, and July 31, 2009, respectively. Signed by the Mayor on August 26, 2009, it was assigned Act No. 18-189 and transmitted to both Houses of Congress for its review. D.C. Law 18-88 became effective on December 10, 2009.

CASE NOTES

ANALYSIS

Common law marriage.
Harmless error.
In general.
Standing.

Common law marriage.

Defendant's girlfriend was not his common law wife, and thus defendant's communications with girlfriend, in which he purportedly stated that he and his co-defendant held the victims at gunpoint before shooting them and advised girlfriend to claim to police she did not know anything about the murders, were not protected by the spousal privilege in trial of defendant on two counts of first-degree premeditated murder and other crimes, where defendant had been dating his girlfriend for only one or two months before he was arrested for the murders, defendant did not ask his girlfriend to marry him until after he was arrested, and, because of defendant's incarceration, they were unable to live together after they became engaged. *Coleman v. United States*, 948 A.2d 534, 2008 D.C. App. LEXIS 246 (2008), writ of certiorari denied by 558 U.S. 931, 130 S. Ct. 349, 175 L. Ed. 2d 231, 2009 U.S. LEXIS 6443, 78 U.S.L.W. 3180 (2009).

Persons in common-law marriages may invoke the protection of the statutory privilege. *Coleman v. United States*, 948 A.2d 534, 2008 D.C. App. LEXIS 246 (2008), writ of certiorari denied by 558 U.S. 931, 130 S. Ct. 349, 175 L. Ed. 2d 231, 2009 U.S. LEXIS 6443, 78 U.S.L.W. 3180 (2009).

Defendant who claimed he and a government witness had a common law marriage, thereby triggering marital privilege, had burden to prove, by a preponderance of the evidence, all of the essential elements of a common law marriage. *Mesa v. United States*, 875 A.2d 79, 2005 D.C. App. LEXIS 256 (2005).

If a party proves the existence of a valid common law marriage with a witness, the marital privilege is applicable. *Mesa v. United States*, 875 A.2d 79, 2005 D.C. App. LEXIS 256 (2005).

Defendant failed to show by a preponderance of the evidence that he and a government witness had a common law marriage, and thus defendant could not invoke marital privilege during murder prosecution with respect to the witness's testimony and his communications with her; witness's driver's license and financial aid application for university did not bear defendant's last name, both documents revealed that she was single, witness identified herself as defendant's "girlfriend" when she spoke with police detective, defendant and witness had separate dormitory rooms at univer-

sity and did not apply for married housing, and witness only told a few friends that she was married and often did not wear wedding ring. *Mesa v. United States*, 875 A.2d 79, 2005 D.C. App. LEXIS 256 (2005).

Harmless error.

Error of trial court by failing to instruct alleged victim, who married defendant post-crime but prior to defendant's trial, of her spousal privilege not to testify, was not harmless error, in trial of defendant for simple assault, attempted threats and attempted possession of a prohibited weapon; though trial record was incomplete, it appeared that alleged victim would have preferred not to testify, that alleged victim suggested that she had falsely testified before the grand jury and feared a prosecution for perjury based on conflicting testimony, that alleged victim only testified because government offered her use immunity, and thus, if court had instructed her on the spousal privilege, it was likely that alleged victim would not have testified, and thus the government would not have been able to impeach the alleged victim with, and convict defendant based on, alleged victim's grand jury testimony. *Egbuka v. United States*, 968 A.2d 511, 2009 D.C. App. LEXIS 61 (2009).

In general.

In his appeal of convictions for simple assault, attempted threats and attempted possession of a prohibited weapon, arising out of incident with alleged victim whom he married prior to his trial, defendant could raise issue of whether trial court's failure to advise alleged victim of her spousal privilege not to testify required a reversal of his convictions; though prosecution argued that defendant's challenge to trial court's failure should be analyzed under the rubric of standing and that defendant lacked standing to raise the issue on appeal, question was one of a statutory violation as it impacted upon the fairness of defendant's trial. *Egbuka v. United States*, 968 A.2d 511, 2009 D.C. App. LEXIS 61 (2009).

Trial judge should have instructed alleged victim, who married defendant between the incident giving rise to the prosecution and defendant's trial, of her spousal privilege not to testify, in trial of defendant for simple assault, attempted threats and attempted possession of a prohibited weapon; Intrafamily Offenses Act did not render alleged victim's spousal privilege unavailable in a criminal proceeding against defendant. *Egbuka v. United States*, 968 A.2d 511, 2009 D.C. App. LEXIS 61 (2009).

Spousal testimony privilege belongs only to the witness spouse; it cannot be invoked by the defendant who wishes to keep his or her spouse

off the witness stand. *Smith v. United States*, 947 A.2d 1131, 2008 D.C. App. LEXIS 224 (2008).

To give effect to statutory spousal testimony privilege, outside the presence of the jury, the trial judge should tell one who is called to testify for or against his spouse that his testimony cannot be compelled but may be received if volunteered. *Smith v. United States*, 947 A.2d 1131, 2008 D.C. App. LEXIS 224 (2008).

Marital privilege may be invoked only by the spouse who is called to testify, not by the defendant who wishes to keep his or her spouse off the witness stand; thus, except as to confidential communications made by one to the other, a husband cannot prevent his wife from testifying against him if she is willing to do so. *Riley v. United States*, 923 A.2d 868, 2007 D.C. App. LEXIS 239 (2007), writ of certiorari denied by 555 U.S. 830, 129 S. Ct. 42, 172 L. Ed. 2d 50, 2008 U.S. LEXIS 6577, 77 U.S.L.W. 3198 (2008).

Motion to compel testimony of the spouse of a news reporter was granted where the news reporter had no legal interest in the case in

which her spouse's testimony was sought. *Goulart v. Barry*, 119 WLR 1197 (Super. Ct. 1991).

Where testimony concerns matters that took place before the marriage, there is no basis to invoke the privilege concerning confidential marital communications. *Goulart v. Barry*, 119 WLR 1197 (Super. Ct. 1991).

Adverse impact on a marital relationship alone is insufficient to justify imposition of the adverse spousal testimonial privilege. *Goulart v. Barry*, 119 WLR 1197 (Super. Ct. 1991).

This section does not allow a trial court to compel a wife to testify against her husband even if marriage was entered into to preclude the wife from testifying or because of alleged complicity in the charged crime. *United States v. Washington*, 125 WLR 1185 (Super. Ct. 1185).

Standing.

Defendant convicted of assault for an attack on his wife did not have standing to challenge admission of wife's recorded 911 emergency telephone call based on his wife's marital testimony privilege. *Smith v. United States*, 947 A.2d 1131, 2008 D.C. App. LEXIS 224 (2008).

§ 14-307. Physicians and mental health professionals.

(a) In the Federal courts in the District of Columbia and District of Columbia courts a physician or surgeon or mental health professional as defined by § 7-1201.01(11) or a domestic violence counselor as defined in § 14-310(a)(2), or a human trafficking counselor as defined in § 14-311(a)(2) may not be permitted, without the consent of the client, or of his legal representative, to disclose any information, confidential in its nature, that he has acquired in attending a client in a professional capacity and that was necessary to enable him to act in that capacity, whether the information was obtained from the client or from his family or from the person or persons in charge of him.

(b) This section does not apply to:

(1) evidence in a grand jury, criminal, delinquency, family, or domestic violence proceeding where a person is targeted for or charged with causing the death of or injuring a human being, or with attempting or threatening to kill or injure a human being, or a report has been filed with the police pursuant to § 7-2601, and the disclosure is required in the interests of public justice;

(2) evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity or where the court is required under prevailing law to raise the defense sua sponte, or in the pretrial or posttrial proceedings involving a criminal case where a question arises concerning the mental condition of an accused or convicted person;

(3) evidence relating to the mental competency or sanity of a child alleged to be delinquent, neglected, or in need of supervision in any proceeding before the Family Division of the Superior Court; or

(4) evidence in a grand jury, criminal, delinquency, or civil proceeding where a person is alleged to have defrauded the District of Columbia or federal

government in relation to receiving or providing services under the District of Columbia medical assistance program authorized by title 19 of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), or where a person is alleged to have defrauded a health care benefit program.

(c) For the purposes of this section, the term:

(1) "Health care benefit program" means any public or private plan or contract under which a medical benefit, item, or service is or may be provided to an individual, and includes an individual or entity who provides a medical benefit, item, or service for which payment may be made under the plan or contract.

(2) "Injury" includes, in addition to physical damage to the body, a sexual act or sexual contact prohibited by Chapter 30 of Title 22.

(Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 143(3); Mar. 3, 1979, D.C. Law 2-136, § 805(b), 25 DCR 5055; Mar. 16, 1985, D.C. Law 5-193, § 7, 32 DCR 1010; Mar. 25, 1986, D.C. Law 6-99, § 1101(a), 33 DCR 729; Apr. 30, 1988, D.C. Law 7-104, § 3, 35 DCR 147; Mar. 13, 2004, D.C. Law 15-105, § 99, 51 DCR 881; Mar. 2, 2007, D.C. Law 16-204, § 3(b), 53 DCR 9059; Apr. 24, 2007, D.C. Law 16-305, § 32, 53 DCR 6198; Dec. 10, 2009, D.C. Law 18-88, § 207, 56 DCR 7413; Oct. 23, 2010, D.C. Law 18-239, § 203(b), 57 DCR 5405.)

Cross references. — Adult protective services proceedings, waiver of professional privilege, see § 7-1911.

Family division proceedings, privilege under this section, see § 16-2359.

Neglected children proceedings, waiver of privilege, see § 4-1321.05.

Section references. — This section is referred to in §§ 4-1321.02, 4-1321.05, 7-1911, and 16-2359.

Prior Codifications. — 1981 Ed., § 14-307. 1973 Ed., § 14-307.

Effect of amendments. — D.C. Law 15-105, in subsec. (a), substituted "§ 7-1201.01(11)" for "the District of Columbia Mental Health Information Act of 1978 (D.C. Official Code, sec. 7-1201.01 et seq.)."

D.C. Law 16-204, in subsec. (a), substituted "as defined in § 7-1201.01(11) or a domestic violence counselor as defined in § 14-310(a)(2)" for "as defined in § 7-1201.01(11)".

D.C. Law 16-305, in subsec. (a), substituted "client" for "person afflicted".

D.C. Law 18-88, in subsec. (b)(1), substituted "evidence in a grand jury, criminal, delinquency, family, or domestic violence proceeding where a person is targeted for or charged with causing the death of or injuring a human being, or with attempting or threatening to kill or injure a human being, or a report has been filed with the police pursuant to § 7-2601," for "evidence in criminal cases where the accused is charged with causing the death of, or inflicting injuries upon, a human being,"; in subsec.

(b)(4), substituted "in a grand jury, criminal, delinquency, or civil proceeding" for "in criminal or civil cases" and substituted "approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), or where a person is alleged to have defrauded a health care benefit program." for "approved July 30, 1965 (79 Stat. 343; 42 U.S.C. sec. 1396 et seq.)."; and added subsec. (c).

D.C. Law 18-239, in subsec. (b), substituted "defined in § 14-310(a)(2), or a human trafficking counselor as defined in § 14-311(a)(2)" for "defined in § 14-310(a)(2)".

Emergency legislation. — For temporary (90 day) amendment of section, see § 207 of Omnibus Public Safety and Justice Emergency Amendment Act of 2009 (D.C. Act 18-181, August 6, 2009, 56 DCR 6903).

For temporary (90 day) amendment of section, see § 207 of Omnibus Public Safety and Justice Congressional Review Emergency Amendment Act of 2009 (D.C. Act 18-227, October 21, 2009, 56 DCR 8668).

For temporary (90 day) amendment of section, see § 301 of Comprehensive Impaired Driving and Alcohol Testing Program Emergency Amendment Act of 2012 (D.C. Act 19-429, July 30, 2012, 59 DCR 9387).

Legislative history of Law 2-136. — Law 2-136, the "District of Columbia Mental Health Information Act of 1978," was introduced in Council and assigned Bill No. 2-144, which was referred to the Committee on the Judiciary. The Bill was adopted on first, amended first, second

amended first, and second readings on July 11, 1978, July 25, 1978, September 19, 1978 and October 3, 1978, respectively. Signed by the Mayor on November 1, 1978, it was assigned Act No. 2-292 and transmitted to both Houses of Congress for its review.

Legislative history of Law 5-193. — Law 5-193, the “Medicaid Provider Fraud Prevention Amendments Act of 1984,” was introduced in Council and assigned Bill No. 5-511, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 4, 1984 and December 18, 1984, respectively. Signed by the Mayor on January 11, 1985, it was assigned Act No. 5-258 and transmitted to both Houses of Congress for its review.

Legislative history of Law 6-99. — Law 6-99, the “District of Columbia Health Occupations Revision Act of 1985,” was introduced in Council and assigned Bill No. 6-317, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 17, 1985, and January 14, 1986, respectively. Signed by the Mayor on January 28, 1986, it was assigned Act No. 6-127 and transmitted to both Houses of Congress for its review.

Legislative history of Law 7-104. — Law 7-104, the “Technical Amendments Act of 1987,” was introduced in Council and assigned Bill No. 7-346, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 24, 1987, and December 8, 1987, respectively. Signed by the Mayor on December 22, 1987, it was assigned Act No. 7-124 and transmitted to both Houses of Congress for its review.

Legislative history of Law 15-105. — Law 15-105, the “Technical Amendments Act of 2003,” was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted

on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Legislative history of Law 16-204. — Law 16-204, the “Domestic Violence Amendment Act of 2006,” was introduced in Council and assigned Bill No. 16-466, which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on July 11, 2006, and October 3, 2006, respectively. Signed by the Mayor on October 25, 2006, it was assigned Act No. 16-504 and transmitted to both Houses of Congress for its review. D.C. Law 16-204 became effective on March 2, 2007.

Legislative history of Law 16-305. — Law 16-305, the “People First Respectful Language Modernization Act of 2006,” was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

Legislative history of Law 18-88. — For Law 18-88, see notes following § 14-306.

Legislative history of Law 18-239. — Law 18-239, the “Prohibition Against Human Trafficking Amendment Act of 2010,” was introduced in Council and assigned Bill No. 18-70, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on March 16, 2010, and June 1, 2010, respectively. Signed by the Mayor on June 21, 2010, it was assigned Act No. 18-444 and transmitted to both Houses of Congress for its review. D.C. Law 18-239 became effective on October 23, 2010.

CASE NOTES

ANALYSIS

Acts constituting “disclosure”.

Applicability.

Confessions to doctor.

Discovery.

Due process.

In general.

Interest of public justice.

Liabilities for disclosure.

Persons entitled to assert privilege.

Purpose.

Remand.

Review.

Waiver of privilege.

—Expert testimony by physician; waiver of privilege.

—In general.

—Persons entitled to waive privilege, waiver of privilege.

—Work product or other privileged information, waiver of privilege.

Acts constituting “disclosure”.

Disclosure of veteran’s medical records by Veteran’s Administration in response to grand jury subpoena was not “disclosure” within meaning of District of Columbia’s statutory physician-patient privilege; statute applied only to in-court, evidentiary disclosure of privileged information, documents were never presented to grand jury, and subject of disclosure was never indicted. D.C. Code 1981, § 14-307(a). *Doe v. Di Genova*, 642 F. Supp. 624,

1986 U.S. Dist. LEXIS 22139 (1986), affirmed in part and remanded in part by 851 F.2d 1457, 271 U.S. App. D.C. 230, 1988 U.S. App. LEXIS 9681 (1988).

Even if doctor gave false information to newspaper reporter concerning patient's drug usage, such action did not violate physician-patient privilege where it did not constitute in-court testimony. D.C. Code § 14-307. *Logan v. District of Columbia*, 447 F. Supp. 1328, 1978 U.S. Dist. LEXIS 18774 (1978).

Applicability.

Statute defining physician-patient privilege and, by its terms, operating only in the courts of the District of Columbia was not applicable and did not preclude decedent's son from inspecting decedent's medical records or render physician and hospital free of any duty to make such records available where lawsuit had not taken shape when son asked that records be made accessible. D.C. Code § 14-307(a, b). *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Confessions to doctor.

Rule excluding involuntary confession is unaffected by statute providing that disclosure which otherwise would be confidential under doctor-patient privilege may be permitted in interests of justice. D.C. Code § 14-307(b)(1). *United States v. Robinson*, 439 F.2d 553, 1970 U.S. App. LEXIS 5742 (C.A.D.C. 1970).

Where mental hospital inmate who was subjected to pressures resulting from investigation of crime had been returned to maximum security ward as prime suspect and doctor had developed with him a relationship of confidence with respect to his personal problems, and inmate on asking for doctor's advice was told that confession to hospital administrators would be best thing, confession given before inmate was warned of his rights was involuntary and inadmissible, under Fifth and Sixth Amendments, though given to doctor rather than to police officers. D.C. Code § 14-307(b), (1); U.S. Const. Amends. 5, 6. *United States v. Robinson*, 439 F.2d 553, 1970 U.S. App. LEXIS 5742 (C.A.D.C. 1970).

Confession to doctor was to be considered in light of previous confessions held inadmissible and in light of continuing compulsion and recommendation by other doctor who had built up relationship of confidence with respect to personal problems and, in light of fact that mental hospital inmate was not warned as to possible use of evidence against him, his confession to first-mentioned doctor was involuntary and inadmissible under Fifth and Sixth Amendments though inmate had been told of right to lawyer and though confession to doctor was of therapeutic value. D.C. Code § 14-307; U.S. Const.

Amends. 5, 6. *United States v. Robinson*, 439 F.2d 553, 1970 U.S. App. LEXIS 5742 (C.A.D.C. 1970).

Discovery.

Ex parte interviews with treating physician are permissible means of informal discovery when plaintiff has put medical condition of physician's patient at issue by filing lawsuit. D.C. Code 1981, § 14-307. *Street v. Hedgepath*, 607 A.2d 1238, 1992 D.C. App. LEXIS 116 (1992).

The issue of what mental health records should be made available to the defense pits two strong societal interests against each other. One is the interest in ensuring that those accused of criminal acts receive a fair trial, while the other is the interest in ensuring that persons with mental health problems can seek treatment without fear of disclosure of statements made during the course of that treatment. In re T.M., 120 WLR 2541 (Super. Ct. 1992).

Due process.

Statutory exception to physician-patient privilege in child neglect proceeding did not violate mother's due process privacy right with regard to medical information; interest of District of Columbia in assuring that mother was mentally competent to raise her daughter was sufficiently strong to limit privacy rights. D.C. Code 1981, §§ 2-1355, 14-307; U.S.C. Const. Amends. 5, 14. In re N.H., 569 A.2d 1179, 1990 D.C. App. LEXIS 22 (1990).

In general.

Statute creating physician-patient privilege prevents physician from disclosing confidential information about his or her patient's condition acquired during that professional relationship without consent of patient. D.C. Code 1981, § 14-307. *Nelson v. United States*, 649 A.2d 301, 1994 D.C. App. LEXIS 200 (1994).

Physician-patient privilege, unlike attorney-client privilege, is not child of common law, but creature of statute. D.C. Code 1981, § 14-307(a). *Richbow v. District of Columbia*, 600 A.2d 1063, 1991 D.C. App. LEXIS 336 (1991).

Physician-patient privilege is evidentiary privilege only, and extends no further than courtroom door. D.C. Code 1981, § 14-307(a). *Richbow v. District of Columbia*, 600 A.2d 1063, 1991 D.C. App. LEXIS 336 (1991).

In order to satisfy the showing that a defendant "inflict[ed] injuries upon a human being" pursuant to subsection (b)(1) of this section, the government must allege, with some specificity, the injuries which the defendant is accused of inflicting. *United States v. Jackson*, 121 WLR 849 (Super. Ct. 1993).

Defendant charged with rape may not be required to submit blood sample to be tested for

HIV retrovirus. *United States v. Garmon*, 120 WLR 105 (Super. Ct. 1992).

The physician-patient privilege did not exist at common law and is purely a statutory creation. *United States v. Jackson*, 121 WLR 849 (Super. Ct. 1993).

Evidentiary privileges like the physician-patient privilege, granted by the legislature, can be withdrawn by the legislature. In *re D.H.*, 117 WLR 2109 (Super. Ct. 1989).

Interest of public justice.

Prior leave of court is required before any subpoena may be served by anyone for production of material protected by statutory doctor-patient privilege when disclosure is sought in criminal cases in interest of public justice. Criminal Rule 17(c); D.C. Code 1981, § 14-307. *Brown v. United States*, 567 A.2d 426, 1989 D.C. App. LEXIS 258 (1989), writ of certiorari denied by 494 U.S. 1037, 110 S. Ct. 1497, 108 L. Ed. 2d 632, 1990 U.S. LEXIS 1515, 58 U.S.L.W. 3596 (1990).

The interest in ensuring that persons with mental health problems can seek treatment without fear of disclosure of what they tell in confidence to mental health professionals was particularly strong where the complainant sought counseling at a rape crisis center not as a result of a generalized mental health problem, but rather specifically in connection with the incident which formed the basis for the petition. If the records of her statements to the center about the incident, as well as her sexual history, were subject to disclosure, there could be little doubt that her willingness to seek help from the mental health professionals at the center in the future would have been chilled, and that others who have been the victims of sexual offenses would be hesitant to go to the center for help. In *re T.M.*, 120 WLR 2541 (Super. Ct. 1992).

The language of paragraph (b)(1) of this section permitting disclosure of mental health records "in the interest of public justice" is broad and imprecise. Under this language, a court must look to the interest not only of the defense, but also of complainants and must balance the interests of both sides, as well as the interests of society as a whole. In *re T.M.*, 120 WLR 2541 (Super. Ct. 1992).

The "interest of public justice" exception does not automatically incorporate all disclosure law developed under Brady and, further, does not make the Brady doctrine applicable to records not in the possession of the government. Instead, where the privacy interest of complainants is so strong, the defense must make a clear showing of specific need before such documents should be turned over for in camera inspection, and the mere possibility that Brady-type material is contained in mental health records is not

alone sufficient to require disclosure. In *re T.M.*, 120 WLR 2541 (Super. Ct. 1992).

Liabilities for disclosure.

Veterans Administration's disclosure of veteran's records in response to grand jury subpoena was not tortious breach of confidential relationship; disclosure was made under compulsion by legal process and was therefore privileged. *Doe v. Di Genova*, 642 F. Supp. 624, 1986 U.S. Dist. LEXIS 22139 (1986), affirmed in part and remanded in part by 851 F.2d 1457, 271 U.S. App. D.C. 230, 1988 U.S. App. LEXIS 9681 (1988).

Cause of action for unauthorized disclosure of information obtained through physician-patient relationship would not be recognized. *Logan v. District of Columbia*, 447 F. Supp. 1328, 1978 U.S. Dist. LEXIS 18774 (1978).

Waiver of physician-patient privilege by filing medical malpractice action was consent to disclosure of confidential information and, therefore, defeated claim for breach of confidential relationship. D.C. Code 1981, § 14-307. *Street v. Hedgepath*, 607 A.2d 1238, 1992 D.C. App. LEXIS 116 (1992).

Defendant is not released from obligation of confidence merely because information learned constitutes matter of legitimate public interest. U.S. Const. Amend. 1. *Vassiliades v. Garfinckel's, Brooks Bros.*, 492 A.2d 580, 1985 D.C. App. LEXIS 387 (1985).

Patient who underwent plastic surgery was entitled to expect that photographs of her surgery would not be publicized without her consent, even though subject matter of plastic surgery is of general public interest. U.S.C. Const. Amend. 1. *Vassiliades v. Garfinckel's, Brooks Bros.*, 492 A.2d 580, 1985 D.C. App. LEXIS 387 (1985).

Persons entitled to assert privilege.

Under statute providing that no physician or surgeon shall be permitted without consent of patient or his legal representatives to disclose any confidential information acquired in attending patient professionally, the duly qualified personal representative, when there is one, is deceased patient's "legal representative" for purposes of gathering information with a view to prosecuting a wrongful death claim. D.C. Code §§ 16-2701 to 16-2703. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

Where heirs stand in patient's shoes and there is no controversy between executor and heirs, united heirs are patient's "legal representatives" and may exercise decedent's physician-patient privilege as against a stranger. D.C. Code § 14-307(a). In *re Estate of Wilson*, 416 A.2d 228, 1980 D.C. App. LEXIS 306 (1980).

Decedent's heirs-at-law, either jointly or individually, as well as executor, eo nomine or de jure, were "legal representatives" of decedent for purposes of physician-patient privilege statute. D.C. Code 14-307(a). In re Estate of Wilson, 416 A.2d 228, 1980 D.C. App. LEXIS 306 (1980).

Purpose.

One of the major purposes of statutory physician-patient privilege is to prevent disclosure of information concerning a patient's ailments which might result in his humiliation, embarrassment, or disgrace. D.C. Code § 14-307(a). In re Estate of Wilson, 416 A.2d 228, 1980 D.C. App. LEXIS 306 (1980).

Physician-patient privilege is for the benefit of patient while living and of his estate when dead. D.C. Code § 14-307(a). In re Estate of Wilson, 416 A.2d 228, 1980 D.C. App. LEXIS 306 (1980).

Congress intended for certain medical information regarding gunshot injuries to be protected by the physician-patient privilege, and therefore considered such information confidential, even though it has to be disclosed to the police pursuant to the requirements of the Firearms Reporting Statutes (§ 2-1361 et seq.). United States v. Jackson, 121 WLR 849 (Super. Ct. 1993).

Remand.

Remand was necessary for determination whether disclosure of veteran's medical records pursuant to federal grand jury procedure violated District of Columbia's statutory physician-patient privilege [D.C. Code 1981, § 14-307(a)] so as to raise possibility of equitable or declaratory relief. Doe v. Di Genova, 779 F.2d 74, 1985 U.S. App. LEXIS 24914 (C.A.D.C. 1985).

Review.

Trial court's refusal to find that victim had impliedly waived physician-patient privilege with regard to her medical records by signing waiver for release of such records to government was not plain error in child sexual abuse prosecution; although victim could have waived or have been deemed to have waived privilege under certain circumstances, defendant's failure to raise waiver argument at trial precluded determination of whether such circumstances existed. Nelson v. United States, 649 A.2d 301, 1994 D.C. App. LEXIS 200 (1994).

Waiver of privilege.

— Expert testimony by physician, waiver of privilege.

Defense experts' national standard of care testimony was admissible in patient's medical malpractice action against doctor, arising from removal of organs from patient's body during

"second look" cancer surgery, as experts' testimony was based on national standard that was not personal or speculative, but was generally accepted within defined medical community comprised of limited group of specialists throughout country that treated rare form of cancer, and experts were board certified, attended national meetings, and treated individuals with similar types of diseases. Kordas v. Sugarbaker, 990 A.2d 496, 2010 D.C. App. LEXIS 92 (2010).

Having conceded that nonparty treating physician could properly testify as fact witness for defense in medical malpractice action, thereby waiving physician-patient privilege, plaintiff could not preclude physician from also offering expert opinion based upon his treatment of patient and familiarity with patient's medical condition. D.C. Code 1981, § 14-307(a). Richbow v. District of Columbia, 600 A.2d 1063, 1991 D.C. App. LEXIS 336 (1991).

Implied waiver of physician-patient privilege exists when patient discloses, or permits disclosure of, information gained by physician during physician-patient relationship, and in such circumstances there is no "divisible waiver" through which physician may be barred from giving expert testimony. D.C. Code 1981, § 14-307(a). Richbow v. District of Columbia, 600 A.2d 1063, 1991 D.C. App. LEXIS 336 (1991).

— In general.

Patient who placed physical condition in issue through filing of lawsuit against hospital alleging negligence in allowing water to remain on floor of bathroom in patient's hospital room and who provided portions of medical records pertaining to postaccident treatment waived privilege against disclosure of other relevant, preinjury medical evidence, and thus could be compelled to execute medical authorizations informing her physicians that they could in their discretion disclose to hospital any medical information about patient that they possessed. D.C. Code 1981, § 14-307. Sklagen v. Greater Southeast Community Hospital, 625 F. Supp. 991, 1984 U.S. Dist. LEXIS 18438 (1984).

Patient-litigant may not authorize disclosure of only those portions of medical records favorable to that party's position, while withholding other relevant portions which are unfavorable. Nelson v. United States, 649 A.2d 301, 1994 D.C. App. LEXIS 200 (1994).

Whether implied waiver of physician-patient privilege has occurred depends upon facts and circumstances of particular case. Nelson v. United States, 649 A.2d 301, 1994 D.C. App. LEXIS 200 (1994).

By filing medical malpractice action, patient's surviving spouse waived any physician-patient privilege against disclosure of relevant medical evidence about patient. D.C. Code

1981, § 14-307. *Street v. Hedgepath*, 607 A.2d 1238, 1992 D.C. App. LEXIS 116 (1992).

By placing physical condition in issue through filing of lawsuit, plaintiff waives privilege against disclosure of relevant medical evidence. D.C. Code 1981, § 14-307. *Street v. Hedgepath*, 607 A.2d 1238, 1992 D.C. App. LEXIS 116 (1992).

Waiver of physician-patient privilege by filing action extends only to medical information relevant to the malpractice claim. D.C. Code 1981, § 14-307. *Street v. Hedgepath*, 607 A.2d 1238, 1992 D.C. App. LEXIS 116 (1992).

Treating physicians' opinion that patient would not have survived, even if allegedly negligent physician had timely discovered thyroid cancer, was relevant to proximate cause issue and, therefore, was within surviving spouse's waiver of physician-patient privilege by filing medical malpractice action. D.C. Code 1981, § 14-307. *Street v. Hedgepath*, 607 A.2d 1238, 1992 D.C. App. LEXIS 116 (1992).

Medical malpractice plaintiff's acknowledgment at trial and on appeal that nonparty treating physician's fact testimony was admissible was unambiguous waiver of privilege shielding confidential information. D.C. Code 1981, § 14-307(a). *Richbow v. District of Columbia*, 600 A.2d 1063, 1991 D.C. App. LEXIS 336 (1991).

No distinction should be drawn between a general authorization for the release of medical information and a waiver of the physician-patient privilege. D.C. Code § 14-307. *Jones v. Prudential Ins. Co.*, 388 A.2d 476, 1978 D.C. App. LEXIS 532 (1978).

Where the insured, in her original application for a life insurance policy, signed an authorization for any physician, hospital or clinic to give the insurer any information requested with reference to her past medical history, the signing of such authorization necessarily negated the expectation of protected confidentiality which the physician-patient privilege is intended to protect; moreover, such authorization properly could be treated as a waiver of the privilege. D.C. Code § 14-307. *Jones v. Prudential Ins. Co.*, 388 A.2d 476, 1978 D.C. App. LEXIS 532 (1978).

Defendant did not waive his physician-patient privilege prior to trial merely on the government's speculation that defendant would put his medical condition in issue at trial. *United States v. Jackson*, 121 WLR 849 (Super. Ct. 1993).

— Persons entitled to waive privilege, waiver of privilege.

Decedent's son and only child had so vital an identification with any cause of action potentially arising upon his father's negligently caused demise as would enable him to waive the physician-patient privilege as to pertinent

medical data where there was no personal representative to act in his behalf so that the assertion of the physician-patient privilege did not defeat son's right to inspect decedent's medical report or establish physician's and hospital's duty to preserve confidentiality of records against all save decedent's legal representative. D.C. Code §§ 12-101 to 12-104, 12-301(8), 14-307(a, b), 16-2701 to 16-2703. *Emmett v. Eastern Dispensary & Casualty Hospital*, 396 F.2d 931, 1967 U.S. App. LEXIS 5006 (C.A.D.C. 1967).

An executor de jure is decedent's "legal representative" and is entitled to waive decedent's physician-patient privilege. D.C. Code § 14-307(a). In re *Estate of Wilson*, 416 A.2d 228, 1980 D.C. App. LEXIS 306 (1980).

Where there is a conflict between the heirs-at-law and the executor, either eo nomine or de jure, or where the heirs-at-law are on opposing sides of will contest, any single one of heirs, or executor, eo nomine or de jure, is entitled to waive decedent's physician-patient privilege. D.C. Code § 14-307(a). In re *Estate of Wilson*, 416 A.2d 228, 1980 D.C. App. LEXIS 306 (1980).

— Work product or other privileged information, waiver of privilege.

Notes dictated by psychiatrist following examination of accused and letter subsequently written to defense counsel could not be withheld from prosecution in homicide case under physician-patient privilege where defendant raised insanity defense. D.C. Code § 14-307; Fed. Rules Crim. Proc. rule 16(c), 18 U.S.C. *United States v. Carr*, 437 F.2d 662, 1970 U.S. App. LEXIS 6682 (C.A.D.C. 1970), writ of certiorari denied by 401 U.S. 920, 91 S. Ct. 907, 27 L. Ed. 2d 823, 1971 U.S. LEXIS 3249 (1971).

Where defense expert's opinion as expressed in notes and letter to defense counsel had been immediately communicated by expert to government representative, notes and letter could not be withheld from prosecution on ground of attorney-client relationship. *United States v. Carr*, 437 F.2d 662, 1970 U.S. App. LEXIS 6682 (C.A.D.C. 1970), writ of certiorari denied by 401 U.S. 920, 91 S. Ct. 907, 27 L. Ed. 2d 823, 1971 U.S. LEXIS 3249 (1971).

Calling a psychologist as expert witness resulted in imputed waiver of privilege shielding defense attorney's work product to extent privilege would otherwise have been infringed by compelling disclosure of test protocols on which psychologist relied in his expert opinion. *Clifford v. United States*, 532 A.2d 628, 1987 D.C. App. LEXIS 447 (1987).

Calling psychologist as witness constituted constructive waiver of psychotherapist-patient privilege such that privilege did not preclude compelled production of test protocols on which psychologist relied in giving his opinion. D.C.

Code 1981, §§ 14-307, 14-307(a), (b)(2). Clifford v. United States, 532 A.2d 628, 1987 D.C. App. LEXIS 447 (1987).

§ 14-308. Assessment officials as expert witnesses in condemnation proceedings.

In an action for the condemnation of lands, an official or other employee of the District, charged with the duty of appraising real property for assessment purposes, is not disqualified, by reason of the fact that he is so employed, from testifying as an expert witness to the market value of lands, and as to benefits.

(Dec. 23, 1963, 77 Stat. 520, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 14-308. 1973 Ed., § 14-308.

§ 14-309. Clergy.

A priest, clergyman, rabbi, or other duly licensed, ordained, or consecrated minister of a religion authorized to perform a marriage ceremony in the District of Columbia or duly accredited practitioner of Christian Science may not be examined in any civil or criminal proceedings in the Federal courts in the District of Columbia and District of Columbia courts with respect to any —

(1) confession, or communication, made to him, in his professional capacity in the course of discipline enjoined by the church or other religious body to which he belongs, without the consent of the person making the confession or communication; or

(2) communication made to him, in his professional capacity in the course of giving religious or spiritual advice, without the consent of the person seeking the advice; or

(3)(A) communication made to him, in his professional capacity, by either spouse or domestic partner, in connection with an effort to reconcile estranged spouses or domestic partners, without the consent of the spouse or domestic partner making the communication.

(B) for the purposes of this paragraph, the term “domestic partner” shall have the same meaning as provided in § 32-701(3).

(Dec. 23, 1963, 77 Stat. 520, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 143(4); Apr. 4, 2006, D.C. Law 16-79, § 2(c), 53 DCR 1035.)

Prior Codifications. — 1981 Ed., § 14-309. 1973 Ed., § 14-309.

Effect of amendments. — D.C. Law 16-79 rewrote par. (3) which had read as follows: “(3) communication made to him, in his professional capacity, by either spouse, in connection

with an effort to reconcile estranged spouses, without the consent of the spouse making the communication.”

Legislative history of Law 16-79. — For Law 16-79, see notes following § 14-306.

CASE NOTES

In general.

Admission of defendant to Lutheran minister

that she had chained her children, after he had urged her to confess her sins, was a “privileged

communication” and testimony thereof by minister was inadmissible in prosecution under statute making it a crime to torture, cruelly beat, abuse, or otherwise willfully maltreat a

child. D.C. Code 1951, § 22-901. *Mullen v. U.S.*, 263 F.2d 275, 1958 U.S. App. LEXIS 5139 (C.A.D.C. 1958).

§ 14-310. Domestic violence counselors.

(a) For the purposes of this section, the term:

(1) “Confidential communication” means information exchanged between a victim and a domestic violence counselor during the course of the counselor providing counseling, support, and assistance to a victim, including all records kept by the counselor and the domestic violence program concerning the victim and services provided to the victim.

(2) “Domestic violence counselor” means an employee, contractor, or volunteer of a domestic violence program who:

(A) Is rendering support, counseling, or assistance to a victim;

(B) Has undergone not less than 40 hours of domestic violence counselor training conducted by a domestic violence program that includes dynamics of domestic violence, trauma resulting from domestic violence, crisis intervention, personal safety, risk management, criminal and civil court processes, and resources available to victims; and

(C)(i) Is or is under the supervision of a licensed social worker, nurse, physician, psychologist, or psychotherapist; or

(ii) Is or is under the supervision of a person who has a minimum of 5 years of experience rendering support, counseling, or assistance to persons against whom severe emotional abuse or a criminal offense has been committed or is alleged to have been committed, of which at least 2 years of experience involves victims.

(3) “Domestic violence program” means a nonprofit, non-governmental organization that supports, counsels, and assists victims, including domestic violence hotlines, domestic violence shelters, and domestic violence intake centers.

(4) “Intrafamily offense” shall have the same meaning as provided in § 16-1001(8).

(5) “Victim” means a person against whom severe emotional abuse or an intrafamily offense has been committed or is alleged to have been committed.

(b)(1) A domestic violence counselor shall not disclose a confidential communication except:

(A) As required by statute or by a court of law;

(B) As voluntarily authorized in writing by the victim;

(C) To other individuals employed at the domestic violence program and third party providers when and to the extent necessary to facilitate the delivery of services to the victim;

(D) To the Metropolitan Police Department or other law enforcement agency to the extent necessary to protect the victim or another individual from a substantial risk of imminent and serious physical injury;

(E) To compile statistical or anecdotal information, without personal identifying information, for research or public information purposes; or

(F) For any confidential communications relevant to a claim or defense if the victim files a lawsuit against a domestic violence counselor or a domestic violence program.

(2) Unless the disclosure is public, confidential communications disclosed pursuant to paragraph (1) of this subsection shall not be further disclosed by the recipient except as authorized in paragraph (1) of this subsection.

(3) Confidential communications are not waived by the presence of a sign language or foreign language interpreter. Such an interpreter is subject to the same disclosure limitations set forth in paragraph (1) of this subsection and the same privilege set forth in subsection (c) of this section.

(c)(1) Except as provided in paragraph (2) of this subsection, when a victim is under 12 years of age, has been adjudicated incompetent by a court of competent jurisdiction for the purpose of asserting or waiving the privilege established by this section, or is deceased, the victim's parent, guardian, or personal representative may assert or waive the privilege.

(2) If the parent, guardian, or personal representative of a victim described in paragraph (1) of this subsection has been charged with an intrafamily offense or has had a protection order or a neglect petition entered against him or her at the request of or on behalf of the victim, or otherwise has interests adverse to those of the victim with respect to the assertion or waiver of the privilege, the court shall appoint an attorney for purposes of asserting or waiving the privilege.

(d) The assertion of any privilege under this section is not admissible in evidence.

(Mar. 2, 2007, D.C. Law 16-204, § 3(c), 53 DCR 9059; Mar. 25, 2009, D.C. Law 17-368, § 4(d), 56 DCR 1338.)

Effect of amendments. — D.C. Law 17-368, in subsec. (a)(4), substituted “§ 16-1001(8)” for “§ 16-1001(5)”.

Legislative history of Law 16-204. — For Law 16-204, see notes following § 14-307.

Legislative history of Law 17-368. — Law 17-368, the “Intrafamily Offenses Act of 2008”, was introduced in Council and assigned Bill No. 17-55 which was referred to the Committee

on Public Safety and Judiciary. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 22, 2009, it was assigned Act No. 17-703 and transmitted to both Houses of Congress for its review. D.C. Law 17-368 became effective on March 25, 2009.

§ 14-311. Human trafficking counselors.

(a) For the purposes of this section, the term:

(1) “Confidential communication” means information exchanged between a victim and a human trafficking counselor during the course of the counselor providing counseling, support, and assistance to a victim, including all records kept by the counselor and the human trafficking program concerning the victim and services provided to the victim.

(2) “Human trafficking counselor” means an employee, contractor, or volunteer of a human trafficking program who:

(A) Is rendering support, counseling, or assistance to a victim;

(B) Has undergone not less than 40 hours of human trafficking counselor training conducted by a human trafficking program that includes

dynamics of human trafficking, trauma resulting from human trafficking, crisis intervention, personal safety, risk management, criminal and civil court processes, and resources available to victims; and

(C)(i) Is or is under the supervision of a licensed social worker, nurse, physician, psychologist, or psychotherapist; or

(ii) Is or is under the supervision of a person who has a minimum of 5 years of experience rendering support, counseling, or assistance to persons against whom severe emotional abuse or a criminal offense has been committed or is alleged to have been committed, of which at least 2 years of experience involves human trafficking victims.

(3) “Human trafficking offense” means abducting or enticing a child from his or her home for purposes of prostitution (§ 22-2704); harboring such child (§ 22-2704); pandering (§ 22-2705); inducing or compelling an individual to engage in prostitution (§ 22-2705); compelling an individual to live life of prostitution against his or her will (§ 22-2706); causing spouse to live in prostitution (§ 22-2708); sexual performance using minors (§ 22-3102); forced labor as prohibited by [§ 22-1832]; trafficking in labor or commercial sex as prohibited by [§ 22-1833]; sex trafficking of children as prohibited by [§ 22-1834]; unlawful conduct with respect to documents in furtherance of human trafficking as prohibited by [22-1835]; or benefitting financially from human trafficking, as prohibited by [§ 22-1836].

(4) “Human trafficking program” means a nonprofit, non-governmental organization that supports, counsels, and assists victims of human trafficking.

(5) “Intrafamily offense” shall have the same meaning as provided in § 16-1001(8).

(6) “Victim” means a person against whom a human trafficking offense has been committed or is alleged to have been committed.

(b)(1) A human trafficking counselor shall not disclose a confidential communication except:

(A) As required by statute or by a court of law;

(B) As voluntarily authorized in writing by the victim;

(C) To other individuals employed at the human trafficking program and third party providers when and to the extent necessary to facilitate the delivery of services to the victim;

(D) To the Metropolitan Police Department or other law enforcement agency to the extent necessary to protect the victim or another individual from a substantial risk of imminent and serious physical injury or kidnapping;

(E) To compile statistical or anecdotal information, without personal identifying information, for research or public information purposes; or

(F) For any confidential communications relevant to a claim or defense if the victim files a lawsuit against a human trafficking counselor or a human trafficking program.

(2) Unless the disclosure is public, confidential communications disclosed pursuant to paragraph (1) of this subsection shall not be further disclosed by the recipient except as authorized in paragraph (1) of this subsection.

(3) Confidential communications are not waived by the presence of a sign language or foreign language interpreter. Such an interpreter is subject to the

same disclosure limitations set forth in paragraph (1) of this subsection and the same privilege set forth in subsection (c) of this section.

(c)(1) Except as provided in paragraph (2) of this subsection, when a victim is under 12 years of age, has been adjudicated incompetent by a court of competent jurisdiction for the purpose of asserting or waiving the privilege established by this section, or is deceased, the victim's parent, guardian, or personal representative may assert or waive the privilege.

(2) If the parent, guardian, or personal representative of a victim described in paragraph (1) of this subsection has been charged with an intrafamily offense or has had a protection order or a neglect petition entered against him or her at the request of or on behalf of the victim, or otherwise has interests adverse to those of the victim with respect to the assertion or waiver of the privilege, the court shall appoint an attorney for purposes of asserting or waiving the privilege.

(d) The assertion of any privilege under this section is not admissible in evidence.

(Oct. 23, 2010, D.C. Law 18-239, § 203(c), 57 DCR 5405.)

Legislative history of Law 18-239. — For history of Law 18-239, see notes under § 14-307.

CHAPTER 5. DOCUMENTARY EVIDENCE.

Sec.

14-501. Proof of record.

14-502. Records of deeds, instruments, and wills.

14-503. Record of will as prima facie evidence of contents and execution.

14-504. Force in District of Columbia of wills probated elsewhere.

Sec.

14-505. Municipal ordinances and regulations.

14-506. Certified mail return receipts as prima facie evidence of delivery.

14-507. Other methods of proof.

§ 14-501. Proof of record.

An exemplification of a record under the hand of the keeper of the record, and the seal of the court or office where the record is made, is good and sufficient evidence to prove a record made or entered in any State, territory, commonwealth or possession of the United States. The certificate of the person purporting to be the keeper of the record, accompanied by the seal, is prima facie evidence of that fact.

(Dec. 23, 1963, 77 Stat. 520; Pub. L. 88-241, § 1.)

Cross references. — Certificate of incorporation, presumptive evidence of facts stated in certified copies, see § 29-201.36.

Corporate stock books, presumptive evidence of facts, see § 29-201.26.

Department of Insurance and Securities Regulation records, certified copies as evidence, see § 3-3616.

Domestic life insurance company, presumptive evidence of facts contained in stock book, see § 31-4415.

Fraternal benefit association, articles of association as prima facie evidence of existence and due incorporation, see § 31-5709.

Fraternal benefit association, original policies of liability of successor corporation as prima facie evidence upon division of insurance business, see § 31-5725.

Insurance superintendent, effect of authentication of papers, see § 31-4301.

Public Utilities Commission, transcribed copy of proceedings, admissibility as evidence, see § 43-622.

Section references. — This section is referred to in § 3-3616.

Prior Codifications. — 1981 Ed., § 14-501. 1973 Ed., § 14-501.

CASE NOTES

In general.

Requirement of Uniform Controlled Substances Act that legal custody of chemist report be authenticated incorporates commonly accepted authentication procedures involving seal governing acknowledgments before notaries public, and therefore, chemist could self-authenticate correctness of report and her own legal custody by signing statement under oath verified by signature and seal of notary public. D.C. Code 1981, §§ 14-501, 14-507, 33-556; Fed. Rules Evid. Rule 902(8), 18 U.S.C. Giles v. District of Columbia, 548 A.2d 48, 1988 D.C. App. LEXIS 155 (1988).

To lay foundation for admission of document as public record, party must prove, first, that facts stated in document are within personal knowledge and observation of recording official, and second, that document is prepared pursuant to duty imposed by law or implied by nature of office. In re D.M.C., 503 A.2d 1280, 1986 D.C. App. LEXIS 277 (1986).

Mere authentication of document as official record is not sufficient to make its contents admissible under public-records exception to hearsay rule. In re D.M.C., 503 A.2d 1280, 1986 D.C. App. LEXIS 277 (1986).

§ 14-502. Records of deeds, instruments, and wills.

Under the hand of the keeper of a record and the seal of the court or office in which the record was made:

(1) a copy of the record of a deed, or other written instrument not of a testamentary character, where the laws of the State, territory, commonwealth, possession or country where it was recorded require such a record, and that has been recorded agreeably to those laws; and

(2) a copy of a will that the laws require to be admitted to probate and record by judicial decree, and of the decree of the court admitting the will to probate and record —

are good and sufficient prima facie evidence to prove the existence and contents of the deed, will, or other written instrument, and that it was executed as it purports to have been executed.

(Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1.)

Cross references. — Irregular deeds legalized, see § 42-408.
Surveyor's records, transcript, see § 1-1311.

Prior Codifications. — 1981 Ed., § 14-502.
1973 Ed., § 14-502.

§ 14-503. Record of will as prima facie evidence of contents and execution.

A record of a will or codicil recorded in the office of the Register of Wills of the District of Columbia, that has been admitted to probate by a court in the District of Columbia, or a record of the transcript of the record and probate of a will or codicil elsewhere, or of a certified copy thereof filed in the office of the Register of Wills, is prima facie evidence of the contents and due execution of the will or codicil.

(Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 143(5).)

Prior Codifications. — 1981 Ed., § 14-503. 1973 Ed., § 14-503.

§ 14-504. Force in District of Columbia of wills probated elsewhere.

A record in the office of the Register of Wills for the District of Columbia of a duly certified copy, or transcript of the record of proceedings, admitting a will or codicil to probate outside of the District of Columbia; and a record in that office of a will or codicil admitted to probate in the District before June 8, 1898, and not annulled or declared void according to law prior to June 8, 1898, shall be deemed and held as of the same force and effect as if the will or codicil had been duly proved and admitted to probate and record pursuant to sections 19-301 to 19-303 [§ 19-303 repealed].

(Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 14-504. 1973 Ed., § 14-504. 19-303, referred to at the end of this section, were repealed by the Act of September 14, 1965, 79 Stat. 780, Pub. L. 89-183, § 8.

References in text. — Sections 19-301 to

§ 14-505. Municipal ordinances and regulations.

Municipal ordinances and regulations in force in the District of Columbia may be proved by producing in evidence a copy thereof certified as provided by the Commissioner [Mayor]; and the certified copy is prima facie evidence of the due adoption and promulgation of the ordinances and regulations.

(Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 143(6).)

Prior Codifications. — 1981 Ed., § 14-505. 1973 Ed., § 14-505.

Change in Government. — This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner.

The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made, in brackets, in this section.

CASE NOTES

In general.

It is error to admit in evidence an alleged ordinance of the corporation of Washington, without further proof of its enactment than the fact of finding it printed in a publication enti-

tled, "Laws of the Corporation of the City of Washington, Passed by the Sixty-Fifth Council; Printed by Order of the Council, Washington. R.A. Waters, Printer, 1868." *District of Columbia v. Johnson*, 12 D.C. 51 (D.C.Sup. 1881).

§ 14-506. Certified mail return receipts as prima facie evidence of delivery.

Return receipts for the delivery of certified mail which is utilized under any provision of law shall be received in the courts as prima facie evidence of delivery to the same extent as return receipts for registered mail.

(Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 14-506. 1973 Ed., § 14-506.

§ 14-507. Other methods of proof.

This chapter does not prevent the proof of records or other documents by any method authorized by other laws or rules of court.

(Dec. 23, 1963, 77 Stat. 521, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 14-507. 1973 Ed., § 14-507.

CASE NOTES

In general.

Reports which were not offered for the truth

of what was asserted in them, but, rather, to show that employer relied on them in deciding

to discipline employee and then to terminate him were not hearsay so as to be inadmissible in employment discrimination action. *Hollins v. Fannie Mae*, 760 A.2d 563, 2000 D.C. App. LEXIS 246 (2000).

Requirement of Uniform Controlled Substances Act that legal custody of chemist report be authenticated incorporates commonly accepted authentication procedures involving seal governing acknowledgments before notaries public, and therefore, chemist could self-authenticate correctness of report and her own

legal custody by signing statement under oath verified by signature and seal of notary public. D.C. Code 1981, §§ 14-501, 14-507, 33-556; Fed. Rules Evid. Rule 902(8), 18 U.S.C. *Giles v. District of Columbia*, 548 A.2d 48, 1988 D.C. App. LEXIS 155 (1988).

Documentary evidence must be authenticated before it will be admitted, but authentication need not be by direct proof, and circumstantial evidence will suffice under proper conditions. *Namerdy v. Generalcar*, 217 A.2d 109, 1966 D.C. App. LEXIS 140 (App. 1966).

CHAPTER 7. ABSENCE FOR SEVEN YEARS.

Sec.
14-701. Presumption of death.

Sec.
14-702. Person presumed dead found living.

§ 14-701. Presumption of death.

If a person leaves his domicile without a known intention of changing it, and does not return or is not heard from for seven years from the time of his so leaving, he shall be presumed to be dead in any case where his death is in question, unless proof is made that he was alive within that time.

(Dec. 23, 1963, 77 Stat. 522, Pub. L. 88-241, § 1.)

Cross references. — Administration of estates of absentees and absconders, see § 21-1901 et seq.

Death certificates where death presumed, see § 7-211.

Section references. — This section is referred to in §§ 7-211 and 14-702.

Prior Codifications. — 1981 Ed., § 14-701. 1973 Ed., § 14-701.

CASE NOTES

ANALYSIS

Common law.

Presumption as to continuance of life.

—In general.

—Overcoming presumption, presumption as to continuance of life.

Presumption as to time when person died.

Presumption from absence as to death.

Common law.

The statutory presumption of death arising from absence of seven years is but a declaration of the common-law rule. D.C. Code 1940, § 14-501. *Jemison v. Metropolitan Life Ins. Co.*, 32 A.2d 704, 1943 D.C. App. LEXIS 169 (Cr.App. 1943).

Presumption as to continuance of life.

— In general.

Where time of death is uncertain, there is a presumption of continuance of life. *Bowman v. Redding & Co.*, 449 F.2d 956, 1971 U.S. App. LEXIS 11850 (C.A.D.C. 1971).

Where seven years have not elapsed since a person's disappearance from his home, the presumption is that he is living; and one claiming to the contrary has the burden of overcoming the presumption by proof. *Groff v. Groff*, 36 App.D.C. 560, 1911 U.S. App. LEXIS 5613 (1911).

The burden of proof being upon him who asserts the death of a person standing in the way of his inheritance, such a person once shown to exist will be presumed to be living for such time at least as is not contrary to the rule of nature in respect of the duration of human

life. *Posey v. Hanson*, 10 App.D.C. 496, 1897 U.S. App. LEXIS 3186 (1897).

— Overcoming presumption, presumption as to continuance of life.

In order to overcome the presumption that one who has been heard of within seven years of the time of his disappearance is living, it must appear that the absent person, during the period after his disappearance, encountered some specific peril, or was subject to some immediate danger inconsistent with the continuation of life, or that there were facts and circumstances surrounding his disappearance and absence which would lead to a conviction that death had occurred within a shorter period than seven years. *Groff v. Groff*, 36 App.D.C. 560, 1911 U.S. App. LEXIS 5613 (1911).

While, in the absence of any evidence as to his whereabouts, the law, within seven years after his departure, will presume that a person is still alive, yet this presumption may be removed by credible evidence of his death, however slight. *Groff v. Groff*, 36 App.D.C. 560, 1911 U.S. App. LEXIS 5613 (1911).

The presumption that a woman's prior husband, absent less than seven years, was still living, is removed where she, called as a witness in a suit to annul a subsequent marriage, testifies that he was in failing health, being afflicted with tuberculosis, and that he decided to make a change of climate, in the hope of recovery, and accordingly obtained a position as traveling salesman in California, that he left her with the assurance that he intended to return, and that shortly afterwards she received a letter stating he had been taken with a hemorrhage on the train, and had died; failure

to produce the letter being accounted for. *Groff v. Groff*, 36 App.D.C. 560, 1911 U.S. App. LEXIS 5613 (1911).

A newspaper article that stated that a pilot was "reported to be" an occupant of a plane that crashed was insufficient to overcome the presumption, given that the pilot had been absent for less than seven years, that the pilot was alive, and thus the Superior Court would deny without prejudice a petition to probate the pilot's estate; the article did not identify the source of the purported identification. In re *Karen L. Dodds*, 135 WLR 2889 (Super. Ct. 2007).

Presumption as to time when person died.

Under statute enacting common law presumption of death arising from absence for seven years, there is no presumption concerning the time when the person died. D.C. Code 1929, T. 9, § 31. *Jones v. Metropolitan Life Ins. Co.*, 116 F.2d 555, 1940 U.S. App. LEXIS 2721 (1940).

Where a party has been absent seven years without having been heard of, the presumption is that he is then dead, though there is no presumption as to the time when he died. *Hamilton v. Rathbone*, 9 App.D.C. 48, 1896 U.S. App. LEXIS 3100 (1896).

The presumption arising from an absence of seven years is that death occurred at the expiration of that time. *Moffit v. Varden's Heirs & Ex'rs*, 17 F.Cas. 561, 1840 U.S. App. LEXIS 487 (1840).

Presumption from absence as to death.

Where a person has left his home or place of residence and has neither been heard of nor from for a period of seven years, he may be presumed to be dead; but to raise this presumption there must be some proof of inquiry of the persons and at the places where news of him, if living, would most probably be had. *Posey v. Hanson*, 10 App.D.C. 496, 1897 U.S. App. LEXIS 3186 (1897).

Evidence tending to show that absentee had ample and sufficient reason for leaving his family and disappearing from and not communicating with them may indicate that absentee did not leave his domicile, "without a known intention of changing it," within statute providing that if a person leaves his domicile without a known intention of changing it, and does not return or is not heard from for seven years from

time of his leaving, he shall be presumed to be dead unless proof is made that he was alive within that time. D.C. Code § 14-701. *Sulkie v. Metropolitan Life Ins. Co.*, 336 A.2d 830, 1975 D.C. App. LEXIS 367 (1975).

In action wherein insured's mother-in-law, who was beneficiary under life policy, sought declaration that insured was legally dead on basis of statutory presumption that if person leaves his domicile without a known intention of changing it and does not return or is not heard from for seven years from time of his leaving, he shall be presumed to be dead unless proof is made that he was alive within that time, evidence warranted finding that insured departed with intention of changing his domicile. D.C. Code § 14-701. *Sulkie v. Metropolitan Life Ins. Co.*, 336 A.2d 830, 1975 D.C. App. LEXIS 367 (1975).

Under statute enacting common-law presumption of death arising from absence for seven years, in order to raise presumption of death the absentee must leave his domicile, without any known intention of changing it, and not return or be heard from for seven years. D.C. Code 1940, § 14-501. *Jemison v. Metropolitan Life Ins. Co.*, 32 A.2d 704, 1943 D.C. App. LEXIS 169 (Cr.App. 1943).

Mere failure of insured's family to hear from insured for more than seven years was not sufficient to raise presumption of death, so as to authorize recovery on life policy, where insured was not living with his family but had a fixed abode in another state. D.C. Code 1940, § 14-501. *Jemison v. Metropolitan Life Ins. Co.*, 32 A.2d 704, 1943 D.C. App. LEXIS 169 (Cr.App. 1943).

Evidence was insufficient to support statutory presumption of insured's death arising from absence for seven years, so as to authorize recovery on life policy, where insured was not living with his family at time of his disappearance but had a fixed abode in another state, and it did not appear that any inquiry concerning insured's whereabouts had been made in city in which he had his abode at the time of his disappearance. D.C. Code 1940, § 14-501. *Jemison v. Metropolitan Life Ins. Co.*, 32 A.2d 704, 1943 D.C. App. LEXIS 169 (Cr.App. 1943).

Where a person has been absent from his home for 11 years, and has not been heard of during that time, he is legally presumed to be dead. *Baden v. McKenny*, 18 D.C. 268 (D.C. Sup. 1889).

§ 14-702. Person presumed dead found living.

If the person presumed to be dead pursuant to section 14-701 is found to be living, a person injured by the presumption shall be restored to the rights of which he was deprived by reason of the presumption.

(Dec. 23, 1963, 77 Stat. 522, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 14-702. 1973 Ed., § 14-702.

TITLE 15. JUDGMENTS AND EXECUTIONS; FEES AND COSTS.

Chapter

1. Judgments and Decrees.
3. Enforcement of Judgments and Decrees.
5. Exemptions and Trial of Right to Seized Property.
7. Fees and Costs.
9. Uniform Foreign-Money Claims.

CHAPTER 1. JUDGMENTS AND DECREES.

Sec.	Sec.
15-101. Enforceable period of judgments; expiration.	15-107. Setting off judgments.
15-102. Lien of judgment, decree, or forfeited recognizance.	15-108. Interest on judgment for liquidated debt.
15-103. Effect of revival.	15-109. Interest on judgment for damages in contract or tort.
15-104. Priority of liens.	15-110. Interest on judgment on contracts made elsewhere.
15-105. Decree confirming sale of property; effect; ordering conveyance.	15-111. Counsel fee in proceeding on bond or undertaking.
15-106. Judgment and damages assessed in actions on bonds or penal sums.	15-131 to 15-133. [Repealed].

§ 15-101. Enforceable period of judgments; expiration.

(a) Except as provided by subsection (b) of this section, every final judgment or final decree for the payment of money rendered in the —

(1) United States District Court for the District of Columbia; or

(2) Superior Court of the District of Columbia,

when filed and recorded in the office of the Recorder of Deeds of the District of Columbia, is enforceable, by execution issued thereon, for the period of twelve years only from the date when an execution might first be issued thereon, or from the date of the last order of revival thereof. The time during which the judgment creditor is stayed from enforcing the judgment, by written agreement filed in the case, or other order, or by the operation of an appeal, may not be computed as a part of the period within which the judgment is enforceable by execution.

(b) At the expiration of the twelve-year period provided by subsection (a) of this section, the judgment or decree shall cease to have any operation or effect. Thereafter, except in the case of a proceeding that may be then pending for the enforcement of the judgment or decree, action may not be brought on it, nor may it be revived, and execution may not issue on it.

(Dec. 23, 1963, 77 Stat. 522, Pub. L. 88-241, § 1; Nov. 2, 1966, 80 Stat. 1177, Pub. L. 89-745, §§ 1(a), 7; Mar. 11, 1968, 82 Stat. 42, Pub. L. 90-263, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(1).)

Cross references. — Action of account, see § 16-101.

Adoption proceedings, entry of interlocutory or final decrees, see § 16-309.

Child support, withholding of income after lapse, see § 46-215.

Enforcement of foreign judgments, see § 12-307.

Interest on judgments, see § 15-108 et seq.
Superior Court judgments, lapse, see § 16-578.

Section references. — This section is referred to in §§ 16-578 and 46-215.

Prior Codifications. — 1981 Ed., § 15-101. 1973 Ed., § 15-101.

Editor's notes. — Section 27 of D.C. Law 15-354 provided that Title 15 is designated Title 15 of the District of Columbia Official Code.

CASE NOTES

ANALYSIS

Construction with Social Services Amendment Act.

In general.

Laches.

Period as statute of limitations.

Retroactive effect.

Stay of enforcement.

Support payments.

Time to raise limitation.

Construction with Social Services Amendment Act.

Judgment creditor's inability to garnish wages of judgment debtor who was a federal employee until effective date of act allowing garnishment of wages to enforce legal obligation to provide child support had no effect upon life of judgments upon which judgment creditor ultimately sought to execute and no effect upon necessity to revive judgment prior to issuing writ of execution. D.C. Code §§ 15-101, 15-302, 15-305, 16-543; Social Services Amendments of 1974, § 459, 88 Stat. 2337. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

Even if judgment creditor had made showing that all of debtor's assets were immune from attachment in aid of execution until effective date of Social Services Amendments Act allowing garnishment of wages of federal employee to satisfy legal obligation for child support, Act did not extend period prescribed by statutes governing enforceable period of judgment and issuance of writ of execution. D.C. Code §§ 15-101, 15-302, 15-302(a)(2); D.C. Code 1961, § 15-201. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

In general.

Life of unrecorded judgment is 12 years and execution may issue on judgment, under the law, despite judgment debtor's wages being immune from attachment. D.C. Code § 15-101. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

Life of recorded and unrecorded judgment is equal: 12 years from when execution might first have issued. D.C. Code § 15-101. *Lomax v.*

Spriggs, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

Laches.

Assuming that delay was unexcused in renewing motion for reconsideration of judgment that allowed estate attorney to retain payment for fees incurred prior to removal of personal representatives of estate, attorney did not establish that he was prejudiced by the delay as required for a defense of laches, even though estate's heir and one of the removed personal representatives of estate died during the delay, where the heir was not relevant as a witness, the other removed representative was still alive, and deposition testimony from the deceased representative existed. In re Estate of *Derricotte*, 885 A.2d 320, 2005 D.C. App. LEXIS 539 (2005).

Three year long gap between motion to reconsider judgment allowing estate attorney to retain payment for fees incurred prior to removal of personal representatives of estate and the renewed motion for reconsideration was excusable, and thus, the successor representative was not precluded under the doctrine of laches from renewing motion, where the delay was due to the fact that the trial court lost jurisdiction over the case once the removed representatives appealed the court's ruling, and jurisdiction did not return until the Court of Appeals ruled on the appeal. In re Estate of *Derricotte*, 885 A.2d 320, 2005 D.C. App. LEXIS 539 (2005).

A plaintiff may not use laches to bar a right asserted merely by way of defense. *LaPrade v. Rosinsky*, 882 A.2d 192, 2005 D.C. App. LEXIS 467 (2005).

Laches may be used as a shield, but not as a sword by one seeking affirmative relief. *LaPrade v. Rosinsky*, 882 A.2d 192, 2005 D.C. App. LEXIS 467 (2005).

Purported purchaser of undivided one-half interest in residential real property could not use her broad assertion that purported vendors were barred by laches to keep vendors from raising a defense on the merits against her action for partition. *LaPrade v. Rosinsky*, 882 A.2d 192, 2005 D.C. App. LEXIS 467 (2005).

Trade name owner's competitor did not waive its affirmative defense of laches by failing to

raise it in answer to owner's petition to enforce consent decree; the competitor put the owner on notice of its affirmative defense of laches in its summary judgment pleadings, the owner had and exercised a full and fair opportunity to meet it, and there was no prejudice. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Laches was a viable defense for former husband in proceeding instituted by former wife by service of a writ of attachment on the federal agency responsible for disbursing husband's retirement pay, seeking enforcement of a consent order directing him to pay child support and alimony. D.C. Code 1981, § 15-101. *Padgett v. Padgett*, 472 A.2d 849, 1984 D.C. App. LEXIS 310 (1984).

Evidence, including the fact of several contempt motions brought against former husband by former wife, that husband made no effort to conceal his whereabouts, and that wife had been employed full time but was facing retirement at time she commenced action, supported trial court's finding that wife's delay of nine years, from time husband discontinued support payments required to be made by consent decree until she filed a writ of attachment seeking enforcement of the consent order, was unreasonable, as regarded husband's contention that the doctrine of laches barred wife's claim. D.C. Code 1981, § 15-101. *Padgett v. Padgett*, 472 A.2d 849, 1984 D.C. App. LEXIS 310 (1984).

The defense of laches may partially or wholly bar an action to collect past-due support payments. D.C. Code 1973, §§ 15-101(b), 15-103. *Jasper v. Carter*, 451 A.2d 46, 1982 D.C. App. LEXIS 435 (1982).

Period as statute of limitations.

Judgment-creditor's motion to revive a judgment against debtor, which was filed within the twelve-year limitations period, was timely, regardless of whether motion came to the attention of the trial court after the twelve years had lapsed; twelve-year period was not jurisdictional in nature so as to preclude trial court from acting once motion came to court's attention, and limitations statute only required filing within limitations period. *Nat'l Bank of Wash. v. Carr*, 829 A.2d 942, 2003 D.C. App. LEXIS 489 (2003).

Twelve-year period for enforcement of judgment was never tolled, and thus, judgment creditor was precluded from reviving judgment, which had expired, though appeal had been filed during period, given that no stay was sought nor supersedeas bond obtained or filed. *Dickey v. Fair*, 768 A.2d 540, 2001 D.C. App. LEXIS 51 (2001).

Supersedeas bond operates to stay the enforcement of a judgment pending appeal, and thus, it tolls the statutory twelve-year limit on

enforcing a judgment. *Dickey v. Fair*, 768 A.2d 540, 2001 D.C. App. LEXIS 51 (2001).

Twelve-year period for enforcement of judgments from date execution might first be issued thereon is statute of limitations, not a jurisdictional limitation. D.C. Code 1981, § 15-101. *Mayo v. Mayo*, 508 A.2d 114, 1986 D.C. App. LEXIS 320 (1986).

Retroactive effect.

Act repealing six-year period for life of unrecorded judgment extended from six years to 12 years the life of any recorded judgment which at effective date of act had not expired under six-year rule. D.C. Code § 15-101. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

Stay of enforcement.

Stay of enforcement period of a judgment can be granted by either the trial court or Court of Appeals for any lawful reason, but not without first posting a supersedeas bond or some other appropriate security. *Dickey v. Fair*, 768 A.2d 540, 2001 D.C. App. LEXIS 51 (2001).

Noting of an appeal that is not accompanied or followed by the filing of a supersedeas bond does not operate to stay the enforcement of a judgment. *Dickey v. Fair*, 768 A.2d 540, 2001 D.C. App. LEXIS 51 (2001).

Support payments.

Each child support payment becomes a separate judgment as of the date the payment falls due and the life of each judgment is the 12-year period specified in this section, irrespective of whether the judgments are or are not recorded. See also *Lomax v. Spriggs*, App. D.C., 404 A.2d 943 (1979) and *Jasper v. Carter*, App. D.C., 451 A.2d 46 (1982). *District of Columbia ex rel. Faulkner v. Tinsley*, 118 WLR 2202 (Super. Ct. 1990).

Court-ordered alimony or support payments constitute judgment debts as each installment becomes due and payable. *Mayo v. Mayo*, 508 A.2d 114, 1986 D.C. App. LEXIS 320 (1986).

Support arrearages under a divorce decree ripen into money judgments. *Padgett v. Padgett*, 472 A.2d 849, 1984 D.C. App. LEXIS 310 (1984).

Where court ordered payment of \$7 per week for child support, each periodic payment became a separate money judgment as of date of its accrual. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

Recording of original child support payment order, or the judgment which came into existence as unpaid amounts fell due, had no effect upon enforceable life of judgment. D.C. Code § 15-101. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

Since the custodial parent did not seek to enforce the payment of arrears in this case until Oct. 2, 1990, any sum that became due

and payable before Oct. 2, 1978, could not be enforced by the Court. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

Each weekly payment of support arrearages became a judgment when it became due and payable, and therefore, the sum which accrued for more than twelve (12) years when the defendant failed to pay cannot be enforced by a court order. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

Where defendant failed to pay support arrearages for over 12 years, the child support arrearages which had accrued prior to the 12-year statute of limitations must be subtracted from the total arrearage due. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

While in principle laches is a viable defense in actions for support arrearages which have ripened into money judgments, where the mother did not have the money to consult an attorney to file a contempt motion there was nothing unreasonable in the conduct of the

mother in failing to bring a contempt motion for over 12 years, and laches should not be invoked. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

If the mother is derelict in seeking child support, this should not preclude obtaining child support by the defense of laches, where the children are still minors and in need of support from their noncustodial father and the fact that they are grown should not alter this rationale. *Stroup v. Flook*, 119 WLR 1875 (Super. Ct. 1991).

Time to raise limitation.

Husband who failed at time of divorce to raise 12-year limitation on enforcement of judgments as defense to claim for support and maintenance for which he was in arrears could not subsequently do so in motion for reduction of arrearage. D.C. Code 1981, § 15-101. *Mayo v. Mayo*, 508 A.2d 114, 1986 D.C. App. LEXIS 320 (1986).

§ 15-102. Lien of judgment, decree, or forfeited recognizance.

(a) Each —

(1) final judgment or decree for the payment of money rendered in the United States District Court for the District of Columbia, or the Superior Court of the District of Columbia, from the date such judgment or decree is filed and recorded in the office of the Recorder of Deeds of the District of Columbia, and

(2) recognizance taken by the United States District Court for the District of Columbia, or the Superior Court of the District of Columbia, from the date the entry or order of forfeiture of such recognizance is filed and recorded in the office of the Recorder of Deeds of the District of Columbia, shall constitute a lien on all the freehold and leasehold estates, legal and equitable, of the defendants bound by such judgment, decree, or recognizance, in any land, tenements, or hereditaments in the District of Columbia, whether the estates are in possession or are reversions or remainders, vested or contingent. Such liens on equitable interest may be enforced only by an action to foreclose.

(b) Liens created as provided by this section continue as long as the judgment, decree, or recognizance is in force or until it is satisfied or discharged.

(c) This section shall not apply to any property that is owned by the District government or by any independent agency or instrumentality of the District government, nor to any property in which the District government or any independent agency or instrumentality of the District government has an interest, to the extent of that interest.

(Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1; Nov. 2, 1966, 80 Stat. 1177, Pub. L. 89-745, §§ 2, 7; Mar. 11, 1968, 82 Stat. 42, Pub. L. 90-263, § 2; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(2); June 6, 1996, D.C. Law 11-136, § 2, 43 DCR 2127.)

Cross references. — Fees for the services of Recorder of Deeds, see § 42-1210.

Forfeited recognizances and judgments, executions upon, see § 16-709.

Purchase money lien, priority, see § 15-104.

Recorder of Deeds, fees, see § 42-1210.

Writ of execution, period during which writ may be issued or returned, see § 15-302.

Section references. — This section is referred to in § 42-1210.

Prior Codifications. — 1981 Ed., § 15-102. 1973 Ed., § 15-102.

Temporary Amendment of Section. — Section 2 of D.C. Law 11-108 added (c).

Section 3 of D.C. Law 11-108 provided that subsection (c) of § 15-102 shall be fully retroactive. Section 3 of D.C. Law 11-108, also provided that the Recorder of Deeds of the District of Columbia shall forthwith cause to be released from the records under his or her control all liens against property that is owned by the District government or by any independent agency or instrumentality of the District government, or in which the District government or any independent agency or instrumentality of the District government has an interest, to the extent of that interest.

Section 5(b) of D.C. Law 11-108 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 2 of the Property

Lien Emergency Amendment Act of 1995 (D.C. Act 11-168, December 8, 1995, 42 DCR 7067) and § 2 of the Property Lien Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-224, March 7, 1996, 43 DCR 1420).

Section 3 of D.C. Act 11-168 and § 3 of D.C. Act 11-224 provided for the retroactivity of the amendment by § 2 of the act.

Legislative history of Law 11-136. — Law 11-136, the “Judgment Lien on Property Amendment Act of 1996,” was introduced in Council and Assigned Bill No. 11-508, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 5, 1996, and April 2, 1996, respectively. Signed by the Mayor on April 11, 1996, it was assigned Act No. 11-248 and transmitted to both Houses of Congress for its review. D. C. Law 11-136 became effective on June 6, 1996.

Editor’s notes. — Retroactivity of D.C. Law 11-136: Section 3 of D.C. Law 11-136 provided that § 2 of the act “shall be fully retroactive. The Recorder of Deeds of the District of Columbia shall forthwith cause to be released, from the records under the control of the Recorder of Deeds, all judgment liens against property that is owned by the District government or by any independent agency or instrumentality of the District government, or property in which the District government or any independent agency or instrumentality of the District government has an interest, to the extent of that interest.”

CASE NOTES

ANALYSIS

Construction with other laws.
Decree for the payment of money.
In general.

Construction with other laws.

Judgment creditor was required to record judgment lien against judgment debtor’s real property pursuant to statute governing the recording of final judgments, not pursuant to lis pendens statute, since lis pendens statute did not apply to litigation that was no longer pending, and thus creditor’s lien had priority over liens against the property recorded after creditor had recorded lien under final judgment statute. *Fid. Nat’l Title Ins. Co. v. Tillerson*, 2 A.3d 198, 2010 D.C. App. LEXIS 495 (2010).

Decree for the payment of money.

Certified copy of the docket sheet in a Landlord Tenant Court case, that showed that a money judgment had been entered, constituted a “decree for the payment of money” within meaning of judgment lien statute, and therefore the filing and recordation in the Office of the Recorder of Deeds of a certified copy of the

docket sheet by the judgment creditor sufficed to create a lien on the real property of an individual against whom the Landlord and Tenant Court had entered a money judgment; docket entry was a separately dated item, demarcating it as distinct from the other 39 entries on the docket sheet, entry contained no recital of pleadings and no history or record of prior proceedings, entry stated plainly in whose favor the judgment was entered and, since it appeared on a docket sheet bearing the caption of the case, anyone reading entry could have seen against whom the judgment was entered. *Robinson v. Georgetown Court Condo., LLC*, 39 A.3d 1286, 2012 D.C. App. LEXIS 131 (2012).

In general.

Judgment creditor’s act of filing a judgment with recorder of deeds constitutes a lien on all freehold and leasehold estates, legal and equitable, of defendants bound by judgment. *D.C. Code 1981, § 15-102(a). Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

Purchase option accompanying lease was not a legal or equitable estate, in land within statute providing that, as of date it is recorded, a

final judgment constitutes a lien on all freehold and leasehold estates, legal and equitable of defendants bound by judgment in any land,

tenements or hereditaments. D.C. Code § 15-102. *Harris v. Wagshal*, 343 A.2d 283, 1975 D.C. App. LEXIS 430 (1975).

§ 15-103. Effect of revival.

An order of revival issued upon a judgment or decree during the period of twelve years from the rendition or from the date of an order reviving the judgment or decree, extends the effect and operation of the judgment or decree with the lien thereby created and all the remedies for its enforcement for the period of twelve years from the date of the order.

(Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1.)

Cross references. — Levy of attachment upon specific property as prerequisite to condemnation and sale, see § 16-555.

Prior Codifications. — 1981 Ed., § 15-103. 1973 Ed., § 15-103.

§ 15-104. Priority of liens.

The lien of a mortgage or deed of trust upon real property, given by the purchaser to secure the payment of the whole or any part of the purchase-money, is superior to that of a previous judgment or decree against the purchaser.

(Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 15-104. 1973 Ed., § 15-104.

CASE NOTES

In general.

Generally, priority of liens or security interests is determined according to the well-known principle of first in time, first in right. *E. Sav. Bank, FSB v. Pappas*, 829 A.2d 953, 2003 D.C. App. LEXIS 533 (2003).

Statute giving priority to purchase money as exception to principle of first in time, first in right, did not preclude equitable subrogation of lender to position of senior deed of trust in connection with refinancing; the doctrine of equitable subrogation was concerned with an issue that did not arise under the statute. *E. Sav. Bank, FSB v. Pappas*, 829 A.2d 953, 2003 D.C. App. LEXIS 533 (2003).

Holder of purchase-money deed of trust containing provision that it should be subordinate to any construction loan and all advances made under construction loan was, on foreclosure of first deed of trust held by construction lender, entitled to priority with respect to surplus remaining after satisfaction of construction lender's debt and payment of foreclosure expenses, notwithstanding construction lender's claim to surplus to satisfy mechanic's lien it had paid against property. D.C. Code §§ 15-104, 38-109. *Guardian Federal Sav. & Loan Asso. v. Suskind*, 265 A.2d 295, 1970 D.C. App. LEXIS 279 (App. 1970).

§ 15-105. Decree confirming sale of property; effect; ordering conveyance.

A decree confirming the sale of real or personal property sold pursuant to a decree, divests the right, title, or interest sold out of the former owner, party to the action, and vests it in the purchaser, without any conveyance by the officer or agent of the court conducting the sale. The decree constitutes notice to all persons of the transfer of title when a copy thereof is registered among the

land-records of the District. In particular cases, the court may order its officer or agent to make a conveyance, if that mode is deemed preferable.

(Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1.)

Cross references. — Deficiency decrees in cases of mortgage foreclosures, see § 42-816.

Prior Codifications. — 1981 Ed., § 15-105. 1973 Ed., § 15-105.

§ 15-106. Judgment and damages assessed in actions on bonds or penal sums.

(a) In a civil action on a bond or on a penal sum for the nonperformance of covenants or agreements contained in an indenture, deed, or writing, the plaintiff may assign as many breaches as he chooses. Damages shall be assessed for such breaches as he proves and judgment rendered for the whole penalty, but execution shall issue for as much only as is found in damages, with costs.

(b) In an action brought under subsection (a) of this section, upon judgment for the plaintiff on motion, default, or confession, the plaintiff may assign as many breaches as he chooses, the truth of which shall be determined. The damages shall be assessed and execution shall issue for such damages only, with costs.

(c) Payment into court, after entry of judgment and prior to the issuance of execution, of the amount of the damages and costs assessed, for the use of the plaintiff or his representatives, stays execution, and the stay shall be entered on the record. Payment to the plaintiff or his representatives, after execution, of the amount of the damages and costs assessed, together with all fees and other reasonable costs of execution, forthwith discharges the defendant's real and personal property from execution, and the discharge shall be entered on the record. However, the judgment shall remain as a security to the plaintiff or his representatives for any other breaches which he or they afterwards prove. From time to time, the plaintiff may, by motion and hearing, with reasonable notice to the defendant, assign other breaches, and damages shall be assessed for such breaches as he proves, with costs. Payment into court, before execution, or to the plaintiff or his representative, after execution, as herein described, has the same effect as hereinbefore directed.

(d) In proceedings under this section, the right of trial by jury, as to issues of fact and the amount of damages to be assessed, is preserved.

(e) This section is subject to section 28-2502 of this Code and to section 1874 of Title 28, United States Code.

(Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1; Aug. 30, 1964, 78 Stat. 677, Pub. L. 88-509, § 3(a).)

Prior Codifications. — 1981 Ed., § 15-106.

1973 Ed., § 15-106.

§ 15-107. Setting off judgments.

Where reciprocal claims between different parties have passed into judgments the court, on motion, may order that the judgments be set off against

each other and satisfaction of both be entered to the amount of the smaller claim.

(Dec. 23, 1963, 77 Stat. 524, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 15-107. 1973 Ed., § 15-107.

§ 15-108. Interest on judgment for liquidated debt.

In an action in the United States District Court for the District of Columbia or the Superior Court of the District of Columbia to recover a liquidated debt on which interest is payable by contract or by law or usage the judgment for the plaintiff shall include interest on the principal debt from the time when it was due and payable, at the rate fixed by the contract, if any, until paid.

(Aug. 30, 1964, 78 Stat. 677, Pub. L. 88-509, § 3(b)(1); July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(3).)

Prior Codifications. — 1981 Ed., § 15-108. 1973 Ed., § 15-108.

CASE NOTES

ANALYSIS

Alimony.
Contract claims.
Foreign judgments.
In general.
Interpleader actions.
Liquidated debt defined.
Mandatory nature of interest.
Pension payments.
Prejudgment interest.
Purpose.
Rate of interest.
Time from which interest runs.

Alimony.

Trial court could not order payment of more than \$12,000 in alimony arrears by former husband at a rate of \$50 a month without awarding pre- or post-judgment interest and without making any findings regarding basis for its decision to spread payment over such a long period of time; failure to award interest effectively deprived former wife of full value of money owed her. *Li v. Lee*, 817 A.2d 841, 2003 D.C. App. LEXIS 90 (2003).

Contract claims.

For purposes of entitlement to prejudgment interest with respect to depositary bank's allowing employee of corporate customer to open a corporate account without any documentation and taking for deposit in that account checks on missing or forged endorsements, amount for breach of contract claim was not liquidated, but, under District of Columbia law, prejudgment interest would be allowable on conversion claim to extent that it would make the injured

party whole. D.C. Code 1981, §§ 15-108, 15-109. *Kuwait Airways Corp. v. American Sec. Bank, N.A.*, 890 F.2d 456, 1989 U.S. App. LEXIS 17944 (C.A.D.C. 1989).

Pedestrian, who was injured when struck by automobile driven by unlicensed teenage driver and who subsequently obtained judgment against owners of automobile, failed to establish that initial unsatisfied judgment against driver was payable by contract or usage, and thus was entitled under District of Columbia law to prejudgment interest accruing from date of latter rather than prior judgment. *Athridge v. Iglesias*, 382 F.Supp.2d 42, 2005 U.S. Dist. LEXIS 16662 (2005).

Following determination that subcontractor was liable for damage to building and settlement with respect to damages for repair costs to such building, subrogee of general contractor was entitled under District of Columbia law to prejudgment interest on reasonable cost of repairs to building, as well as amounts paid for profit and overhead; such sums were liquidated debt, as they were stipulated from onset of litigation or easily determinable, and interest was payable under subcontract agreement between general contractor and subcontractor. D.C. Code 1981, § 15-108. *Harbor Ins. Co. v. Schnabel Found. Co.*, 992 F. Supp. 431, 1997 U.S. Dist. LEXIS 21584 (1997), vacated by, dismissed by 992 F. Supp. 437, 1997 U.S. Dist. LEXIS 21586 (D.D.C. 1997).

Where a contract does not specifically require compound interest, court is reluctant to imply such a term absent a showing of agreement between the parties. *Bragdon v. Twenty-Five Twelve Assocs. L.P.*, 856 A.2d 1165, 2004 D.C. App. LEXIS 438 (2004).

Prejudgment and judgment interest are ordinarily not compounded in the absence of contract provision. *Bragdon v. Twenty-Five Twelve Assocs. L.P.*, 856 A.2d 1165, 2004 D.C. App. LEXIS 438 (2004).

When a liquidated damages provision is the product of fair arm's length bargaining, particularly between sophisticated parties, common law suspicions may be eased and more latitude may be afforded the contracting parties to agree as they wish on the remedies for breach. *Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

Where there is a disparity of bargaining power and one party unilaterally imposes a liquidated damages provision in an adhesive contract, the skepticism shown by the common law to liquidated damages is at its height. *Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

Considerations of judicial economy and freedom of contract favor enforcement of stipulated damages clauses, as such clauses enable the contracting parties to control their exposure to risk, achieve economic efficiency, avoid the uncertainty, delay, and expense of the judicial process, and correct what the parties perceive to be inadequate judicial remedies by agreeing upon a formula which may include damage elements too uncertain or remote to be recovered under rules of damages applied by the courts. *Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

For a liquidated damages clause to be valid and enforceable, and not void as a penalty, the common law insists that the liquidated damages must not be disproportionate to the level of damages reasonably foreseeable at the time of the making of the contract. *Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

Liquidated damages clauses that provide for payment of fixed sums plainly without reasonable relation to any probable damage which may follow a breach will not be enforced. *Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

Where liquidated damages provision is designed to make the default of the party against whom it runs more profitable to the other party than performance would be, it will be void as a penalty. *Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

When a contract specifies in a liquidated damages provision a single sum in damages for any and all breaches even though it is apparent that all are not of the same gravity, the specification is not a reasonable effort to estimate damages; and when in addition the fixed sum greatly exceeds the actual damages likely to be inflicted by a minor breach, its character as an

improper penalty, rather than a method for determining damages, becomes unmistakable. *Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

While disgorgement is an appropriate remedy for collection of exorbitant liquidated damages, the invalidation of a contractual liquidated damages provision does not deprive the non-breaching party of a remedy for the other party's breach of the contract; non-breaching party is entitled to prove and recover—or recoup, if it is the defendant—its actual damages. *Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

September contract for delivery of concrete planks was a modification of earlier contract for manufacture, not a new contract, and thus supplier was entitled to the 1.5% interest rate on unpaid delivery fees specified in the original contract; contractor asked supplier to deliver planks and agreed to pay for delivery costs, and nothing in original contract prohibited modification. *Hildreth Consulting Eng'rs, P.C. v. Larry E. Knight, Inc.*, 801 A.2d 967, 2002 D.C. App. LEXIS 361 (2002).

Trial court erred by not awarding prejudgment interest on amount owing to expelled partner pursuant to partnership agreement; as sum in question was liquidated, prejudgment interest was governed by code provision mandating interest, and court had mistakenly denied interest based upon another code provision governing damages for breach of contract generally. *D.C. Code 1981, §§ 15-108, 15-109. Spriggs v. Bode*, 691 A.2d 139, 1997 D.C. App. LEXIS 47 (1997).

Trial court had power to award optional prejudgment interest in a contract liquidated damages case, though absence of any "contract or law or usage" calling for interest could be relevant to determination of whether award of optional interest would be necessary to fully compensate the plaintiff. *D.C. Code 1981, §§ 15-108, 15-109. Riggs Nat'l Bank v. Carl G. Rosinski Co.*, 596 A.2d 997, 1991 D.C. App. LEXIS 269 (1991).

Vendor of real property was not entitled to interest on counterclaim for amount due under promissory note as purchaser's breach of contract claim against vendor entirely offset vendor's claim; unliquidated claim by purchaser was in existence at time liquidated debt became due, and liquidated debt was expressly contemplated by contract that was subject of unliquidated breach claim. *Waverly Taylor, Inc. v. Polinger*, 583 A.2d 179, 1990 D.C. App. LEXIS 293 (1990).

Record demonstrated that amounts claimed by subcontractor for unpaid balance of subcontract and for a certain change order fluctuated throughout the litigation and were thus not liquidated, and therefore subcontractor was not entitled to an award of prejudgment interest

with respect to those items; however, with respect to award for telephone change order, and for vandalism damages, record demonstrated that those damages were liquidated, and therefore remand to the trial court was appropriate with instructions to award prejudgment interest. *Hartford Acci. & Indem. Co. v. District of Columbia*, 441 A.2d 969, 1982 D.C. App. LEXIS 279 (1982).

In action by concrete subcontractor against concrete supplier for breaches of contract arising from delivery and use of defective concrete, supplier was not entitled to prejudgment interest on its counterclaim of payment for concrete delivered, where contract itself authorized subcontractor to deduct amount of any claim from payment to supplier, and even absent such clause, certain statute authorized subcontractor's actions, and implicit in trial judge's finding for subcontractor was conclusion that subcontractor was not in breach of contract for withholding payment, so that value of supplied concrete was not liquidated debt "due and payable" until contract litigation was concluded. D.C. Code §§ 15-108, 28:2-717. *District Concrete Co. v. Bernstein Concrete Corp.*, 418 A.2d 1030, 1980 D.C. App. LEXIS 345 (1980).

Foreign judgments.

District court's failure to award postjudgment interest, in judgment confirming foreign arbitral award, under Federal Arbitration Act and New York Convention, and holding foreign judgment enforceable, under District of Columbia's Uniform Foreign-Money Judgments Recognition Act (UFMJRA), was "mistake arising from oversight or omission," within meaning of rule authorizing relief from judgment or order, since foreign judgment creditor was statutorily entitled to award of postjudgment interest, and making that determination did not require revisiting merits of judgment creditor's claim. *Cont'l Transfert Technique, Ltd. v. Fed. Gov't of Nig.*, 850 F.Supp.2d 277, 2012 U.S. Dist. LEXIS 41292 (2012).

In general.

Prejudgment interest was properly awarded on judgment for franchisors for overdue franchise and lease fees. D.C. Code 1981, § 15-108. *National Souvenir Center, Inc. v. Historic Figures, Inc.*, 728 F.2d 503, 1984 U.S. App. LEXIS 25586 (C.A.D.C. 1984), writ of certiorari denied by 469 U.S. 825, 105 S. Ct. 103, 83 L. Ed. 2d 48, 1984 U.S. LEXIS 3160, 53 U.S.L.W. 3236 (1984).

District of Columbia statute providing for prejudgment interest is remedial, and should be generously construed so that wronged party can be made whole. *Athridge v. Iglesias*, 382 F.Supp.2d 42, 2005 U.S. Dist. LEXIS 16662 (2005).

Settling tortfeasor was not entitled in contribution action to prejudgment interest under statute applicable to liquidated debts, where settling tortfeasor sought to recover settlement amount of \$850,000 from non-settling tortfeasor but recovered judgment of only \$600,000, one-half of which had to be paid by non-settling tortfeasor. *M. Pierre Equip. Co. v. Griffith Consumers Co.*, 831 A.2d 1036, 2003 D.C. App. LEXIS 559 (2003).

It may be appropriate to limit prejudgment interest, or perhaps even deny it altogether, where the plaintiff has been responsible for undue delay in prosecuting the lawsuit. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

For purposes of determining whether District could recover interest from bank in District's action under Unclaimed Property Act to collect from bank, inter alia, dormant deposits which had no known owners, when bank refused to deliver under Act, it became indebted to District, which had been substituted by operation of law as custodian of abandoned property; furthermore, debt was liquidated, as official checks and deposits which bank was required to deliver to District were "easily ascertainable." D.C. Code 1981, §§ 15-108, 42-201 to 42-242. *Riggs Nat'l Bank v. District of Columbia*, 581 A.2d 1229, 1990 D.C. App. LEXIS 265 (1990).

Where there was no evidence that any of the defendants ever agreed to pay interest, there was no basis in contract, law, or usage for an award of prejudgment interest. *International Limousine Serv., Inc. v. Ritz-Carlton of D.C., Inc.*, 117 WLR 1367 (Super. Ct. 1989).

Timing of request for interest is not a statutory requirement of this section and a party is not barred from recovering interest pursuant to this section even if it was not demanded in the pleadings. *Strand v. Frenkel*, 115 WLR 2205 (Super. Ct. 1985).

Interpleader actions.

Statute providing that in action in United States district court for District of Columbia to recover a liquidated debt on which interest is payable by contract or by law or usage the judgment for plaintiff shall include interest on principal debt from time when it was due and payable does not require payment of interest in interpleader action where demand by one claimant cannot be met without prejudicing the claim of another and thereby possibly subjecting interpleader party to double liability. D.C. Code § 15-108; Fed.Rules Civ.Proc. rule 22, 18 U.S.C. *Powers v. Metropolitan Life Ins. Co.*, 439 F.2d 605, 1971 U.S. App. LEXIS 12301 (C.A.D.C. 1971).

Liquidated debt defined.

For a debt to be "liquidated" so to permit recovery under District of Columbia law of

prejudgment interest thereon, it must be an easily ascertainable sum certain. *Am. Nat'l Red Cross v. Vinton Roofing Co., Inc.*, 697 F.Supp.2d 71, 2010 U.S. Dist. LEXIS 27332 (2010).

Debt former employer owed to former employee for sales commissions and other compensation was not easily ascertainable, and thus was unliquidated debt not subject to prejudgment interest, under District of Columbia code provision applicable only to liquidated debts, in her action to recover compensation from employer. *Fudali v. Pivotal Corp.*, 623 F.Supp.2d 11, 2008 U.S. Dist. LEXIS 108912 (2008).

Liquidated debt, for purposes of District of Columbia statute providing for prejudgment interest, must be easily ascertainable "sum certain" at time it arose. *Athridge v. Iglesias*, 382 F.Supp.2d 42, 2005 U.S. Dist. LEXIS 16662 (2005).

Debt is "liquidated," requiring award of prejudgment interest under District of Columbia law, if at time it arose, it was easily ascertainable sum certain. D.C. Code 1981, § 15-108. *Harbor Ins. Co. v. Schnabel Found. Co.*, 992 F. Supp. 431, 1997 U.S. Dist. LEXIS 21584 (1997), vacated by, dismissed by 992 F. Supp. 437, 1997 U.S. Dist. LEXIS 21586 (D.D.C. 1997).

Fact that total amount of damages sought by owners of commercial building changed during trial did not affect the "liquidated" nature of owners' breach of contract claim against asset manager, for purposes of statute authorizing an award of prejudgment interest in an action to recover on a liquidated debt on which interest is payable, where the changes in total amount were due to adding or subtracting other classes of damages, while the breach of contract amount remained unchanged. *Wash. Inv. Ptnrs. of Del., LLC v. Sec. House*, 28 A.3d 566, 2011 D.C. App. LEXIS 548 (2011).

Asset manager's debt to owners of commercial building, for manager's retention of fees, paid under asset management agreement with owners of commercial building, for services it had not rendered, was a "liquidated" debt, for purposes of statute authorizing an award of prejudgment interest in an action to recover on a liquidated debt on which interest is payable; both parties knew exactly how much manager had been paid under the agreement. *Wash. Inv. Ptnrs. of Del., LLC v. Sec. House*, 28 A.3d 566, 2011 D.C. App. LEXIS 548 (2011).

A "liquidated debt" for which prejudgment interest is recoverable from time the debt is due and payable is one which at the time it arose was an easily ascertainable sum certain. *Aon Risk Servs. v. Estate of Coyne*, 915 A.2d 370, 2007 D.C. App. LEXIS 10 (2007).

Amount that first successor personal representative took from decedent's estate without court approval to pay for fees that probate court declined to award was a "liquidated debt," for purposes of prejudgment interest statute, as

first successor personal representative stipulated that he withdrew such amount and thus amount was an easily ascertainable sum certain. *Estate of Green v. Loewinger*, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

A "liquidated debt" on which prejudgment interest can be awarded is one which at the time it arose was an easily ascertainable sum certain. *Estate of Green v. Loewinger*, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

A debt is "liquidated" and entitles creditor to prejudgment interest, if its amount was readily ascertainable at the time it arose. *Allen v. Yates*, 870 A.2d 39, 2005 D.C. App. LEXIS 44 (2005).

"Liquidated debt" is one which at the time it arose, was an easily ascertainable sum certain, for purposes of determining entitlement to prejudgment interest. *Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

A "liquidated debt" supporting prejudgment interest is one which, at the time it arose, was an easily ascertainable sum certain. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Attorney's claim against client for unpaid fees was not a "liquidated debt," so as to require award of prejudgment interest, since retainer agreement did not contain definite sum for legal services. D.C. Code 1981, § 15-108. *Schwartz v. Swartz*, 723 A.2d 841, 1998 D.C. App. LEXIS 252 (1998).

A "liquidated debt," for which prejudgment interest is required, is one which, at the time it arose, was an easily ascertainable sum certain. D.C. Code 1981, § 15-108. *Schwartz v. Swartz*, 723 A.2d 841, 1998 D.C. App. LEXIS 252 (1998).

For purposes of award of prejudgment interest, "liquidated debt" is one which at the time it arose was an easily ascertainable sum certain. D.C. Code 1981, § 15-108. *District of Columbia v. Pierce Associates, Inc.*, 527 A.2d 306, 1987 D.C. App. LEXIS 372 (1987).

A debt is liquidated if at the time it arose, it was an easily ascertainable sum certain. *Hartford Acci. & Indem. Co. v. District of Columbia*, 441 A.2d 969, 1982 D.C. App. LEXIS 279 (1982).

Mandatory nature of interest.

Under District of Columbia law, award of prejudgment interest on liquidated debts is mandatory as a matter of law. D.C. Code 1981, § 15-108. *Harbor Ins. Co. v. Schnabel Found. Co.*, 992 F. Supp. 431, 1997 U.S. Dist. LEXIS 21584 (1997), vacated by, dismissed by 992 F. Supp. 437, 1997 U.S. Dist. LEXIS 21586 (D.D.C. 1997).

The court usually should award prejudgment interest as delay damages, where the debtor should have paid what he owed, absent some

justification for withholding such an award. Fed. Mktg. Co. v. Va. Impression Prods. Co., 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Pension payments.

Where each member of plaintiff class acquired vested right to receive monthly pension payments at time his application was unlawfully denied, there was liquidated debt in sense that, whenever monthly payment was not made, it was an easily ascertainable sum certain, and question of entitlement of interest was thus controlled by statute providing for inclusion of interest where action is to recover liquidated debt on which interest is payable by contract, by law or by usage; and payment of interest should have been ordered; even if statute were not applicable, denial of interest could not be affirmed as exercise of equitable discretion. D.C. Code §§ 15-108, 15-109, 28-2707, 28-3302. *Kiser v. Huger*, 517 F.2d 1237, 1974 U.S. App. LEXIS 7336 (C.A.D.C. 1974).

Prejudgment interest.

Former employee was not entitled to prejudgment interest, under District of Columbia code provision allowing interest as necessary to fully compensate employee, on unliquidated debts former employer owed to her as sales commissions and other compensation; employee neither requested jury to determine interest issue nor objected to instructions that were silent as to interest, even though federal rules required jury determination regarding interest. *Fudali v. Pivotal Corp.*, 623 F.Supp.2d 11, 2008 U.S. Dist. LEXIS 108912 (2008).

Principles of equity did not entitle parent of minor child to prejudgment interest under District of Columbia law after she had prevailed in her IDEA case against the District of Columbia, where District of Columbia did not seek to deny the parent recovery of attorney fees, but instead disagreed as to the appropriate amount of compensation, and attorney fees invoices were paid promptly with certain adjustments based on the District's belief that the fees were unreasonable. *Garvin v. Gov't of the Dist. of Columbia*, 851 F.Supp.2d 101, 2012 U.S. Dist. LEXIS 45720 (2012).

Foreign judgment creditor's mere inclusion of request for prejudgment interest in complaint seeking to enforce foreign arbitral award, under Federal Arbitration Act and New York Convention, and to enforce, under District of Columbia's Uniform Foreign-Money Judgments Recognition Act (UFMJRA), foreign judgment confirming arbitral award as final and enforceable, did not permit judgment creditor to include request in motion to correct clerical mistake or mistake arising from oversight or omission in district court's judgment confirming award and holding foreign judgment enforceable, since district court's judgment was

silent about prejudgment interest and accurately reflected court's decision, so judgment creditor was required to pursue request through motion to alter or amend judgment. *Cont'l Transfert Technique, Ltd. v. Fed. Gov't of Nig.*, 850 F.Supp.2d 277, 2012 U.S. Dist. LEXIS 41292 (2012).

Award of prejudgment interest on prevailing party attorney fees award was not warranted in action alleging District of Columbia violated IDEA, since action was not one to recover "liquidated debt," and District had not unreasonably refused to settle parent's request for prevailing party attorney fees. *McClam v. Dist. of Columbia*, 808 F.Supp.2d 184, 2011 U.S. Dist. LEXIS 99518 (2011).

Except as to construction firm's claim for prejudgment interest on its damages for "general conditions" under contract with international news network for construction of state-of-art television studio and office space, award of prejudgment and postjudgment interest to firm on damages award was warranted under District of Columbia law in action for breach of contract and unjust enrichment; all damages were easily ascertainable when network terminated contract for convenience, except firm's damages for such general conditions. *Winmar, Inc. v. Al Jazeera Int'l*, 741 F.Supp.2d 165, 2010 U.S. Dist. LEXIS 103031 (2010), amended by 813 F. Supp. 2d 163, 2011 U.S. Dist. LEXIS 110398, 80 Fed. R. Serv. 3d (Callaghan) 1034 (D.D.C. 2011), vacated by 831 F. Supp. 2d 159, 2011 U.S. Dist. LEXIS 146610 (D.D.C. 2011), amended in part by 832 F. Supp. 2d 1, 2011 U.S. Dist. LEXIS 149266 (D.D.C. 2011).

Under District of Columbia law, sales agent was entitled to recover prejudgment interest on jury's damages award in its favor in its action against manufacturer for breach of fiduciary duty, despite manufacturer's contention that debt was not ascertainable until jury awarded specific amount in damages. *C&E Servs. v. Ashland, Inc.*, 601 F.Supp.2d 262, 2009 U.S. Dist. LEXIS 19493 (2009), dismissed by 2009 U.S. App. LEXIS 29585 (D.C. Cir. May 1, 2009).

Co-lead counsel's "debt" to law firm arising from court-ordered increase in law firm's allocation from aggregate attorney fee award in antitrust class action litigation against vitamin manufacturers, following law firm's successful challenge of co-lead counsel's original fee allocations, was not liquidated at the time debt arose, precluding award of prejudgment interest under District of Columbia statute providing for prejudgment interest in action to recover liquidated debt. *In re Vitamins Antitrust Litig.*, 398 F.Supp.2d 209, 2005 U.S. Dist. LEXIS 24481 (2005).

In action brought by pedestrian who was injured when struck by automobile driven by unlicensed teenage driver and who subsequently obtained judgment against owners of

automobile, district court was within its discretion in declining to award prejudgment interest accruing from date of prior unsatisfied judgment against driver; it was unclear whether statute providing for such interest in contract and conversion actions applied to negligence claims, and owners did not become liable until nine years after initial judgment against driver. *Athridge v. Iglesias*, 382 F.Supp.2d 42, 2005 U.S. Dist. LEXIS 16662 (2005).

Pedestrian, who was injured when struck by automobile driven by unlicensed teenage driver and who subsequently obtained judgment against owners of automobile, failed to establish that he was entitled under District of Columbia law to prejudgment interest accruing from date of prior unsatisfied judgment against driver, pursuant to remedial objectives of statute, since pedestrian did not have right to stipulated amount of damages until date of factual finding holding owners liable. *Athridge v. Iglesias*, 382 F.Supp.2d 42, 2005 U.S. Dist. LEXIS 16662 (2005).

Suit by policyholder and insured's estate against broker for procuring accidental death policy with 180-day, rather than 365-day, incurral period in which death needed to occur did not seek liquidated debt and, therefore, did not entitle policyholder and estate to prejudgment interest; an insurance brokerage expert testified that the insurer would have sought to reduce its exposure by reducing the policy limits of a policy with a 365-day period, and, thus, a reasonable controversy as to damages existed. *Aon Risk Servs. v. Estate of Coyne*, 915 A.2d 370, 2007 D.C. App. LEXIS 10 (2007).

Prejudgment interest statute mandates prejudgment interest for liquidated debts from the date the debt is due until the date it is paid. *Estate of Green v. Loewinger*, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

Prejudgment interest was to be calculated on amounts that first successor personal representative withdrew from estate without court permission for fees by applying the interest rate to each of the three withdrawals from the date each of them was withdrawn, as prejudgment interest statute mandated prejudgment interest for liquidated debts from the date the debt was due until the date it was paid. *Estate of Green v. Loewinger*, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

Interest would have been earned on amount that first successor personal representative took from decedent's estate without court approval to pay for fees that probate court declined to award, such that "usage" requirement of prejudgment interest statute was satisfied, even if second successor personal representative did not demonstrate that there was a history of requiring prejudgment interest in the probate court, as funds that first successor personal representative took from the estate

would have been accruing interest or some other type of income had they remained in the estate's account. *Estate of Green v. Loewinger*, 912 A.2d 1198, 2006 D.C. App. LEXIS 647 (2006).

The purpose of prejudgment interest, and of the statute authorizing it, is to assure that the wronged party can be made whole. *Allen v. Yates*, 870 A.2d 39, 2005 D.C. App. LEXIS 44 (2005).

Prejudgment interest accrues on the principal debt from the time when it was due and payable, at the rate fixed by the contract, if any. *Allen v. Yates*, 870 A.2d 39, 2005 D.C. App. LEXIS 44 (2005).

Prejudgment interest must be awarded if the underlying debt is liquidated and if such interest is payable by contract or by law or usage. *Allen v. Yates*, 870 A.2d 39, 2005 D.C. App. LEXIS 44 (2005).

Resident who was overcharged rent by community residence facility was entitled to prejudgment interest on the basis of law and usage, to compensate for overpayment and the resulting deprivation of the use of that money. *Bragdon v. Twenty-Five Twelve Assocs. L.P.*, 856 A.2d 1165, 2004 D.C. App. LEXIS 438 (2004).

Prejudgment interest was to be calculated on each overcharge of rent from the date of its payment by resident, rather than from the date resident made demand on community residence facility for the overcharges, where facility was found to have exerted undue influence on resident; facility could not retain benefit that resulted from possession of overcharges. *Bragdon v. Twenty-Five Twelve Assocs. L.P.*, 856 A.2d 1165, 2004 D.C. App. LEXIS 438 (2004).

In the case of overcharges, prejudgment interest is mandated on the basis of law and usage. *Bragdon v. Twenty-Five Twelve Assocs. L.P.*, 856 A.2d 1165, 2004 D.C. App. LEXIS 438 (2004).

Trial court which determined that prejudgment interest on overcharges of rent was not authorized by underlying contract should have ascertained whether law of customary usage required payment of prejudgment interest. *Bragdon v. Twenty-Five Twelve Assocs. L.P.*, 856 A.2d 1165, 2004 D.C. App. LEXIS 438 (2004).

Where a plaintiff has lost use of his money, a denial of prejudgment interest would deny full compensation to the plaintiff while allowing the recalcitrant party to take advantage of his own wrong and become the richer for it. *Bragdon v. Twenty-Five Twelve Assocs. L.P.*, 856 A.2d 1165, 2004 D.C. App. LEXIS 438 (2004).

Prejudgment interest is not meant to punish a defendant. *Bragdon v. Twenty-Five Twelve Assocs. L.P.*, 856 A.2d 1165, 2004 D.C. App. LEXIS 438 (2004).

Important question in determining entitlement to prejudgment interest is whether the plaintiff has been deprived of the use of the money withheld and should be compensated for the loss. *Bragdon v. Twenty-Five Twelve Assocs. L.P.*, 856 A.2d 1165, 2004 D.C. App. LEXIS 438 (2004).

A court must conduct a separate analysis of each of the three statutory bases for awarding prejudgment interest: contract, law, and usage. *Bragdon v. Twenty-Five Twelve Assocs. L.P.*, 856 A.2d 1165, 2004 D.C. App. LEXIS 438 (2004).

Contractual term entitling community residence facility to a finance charge on late rental payments did not require facility to pay resident prejudgment interest in the event of an overcharge of rent. *Bragdon v. Twenty-Five Twelve Assocs. L.P.*, 856 A.2d 1165, 2004 D.C. App. LEXIS 438 (2004).

Consumers', who sued for liquidated debt of sum total of unreasonably high \$5.00 late fees paid to cable company in class action suit brought pursuant to Consumer Protection Procedures Act (CPPA), were entitled to recover pre-judgment interest on the balance between total sum and setoff for actual damages cable company incurred due to late payment, pursuant to the interest on the net balance rule. *Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

Statutes providing for "prejudgment interest" are remedial and should be generously construed so that the wronged party can be made whole. *Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

"Prejudgment interest" is an element of complete compensation to a creditor for the loss of use of money that a debtor wrongfully withholds. *Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

Where statutory conditions are met, prejudgment interest on judgment for liquidated debt is mandatory. *Dist. Cablevision Ltd. P'shp v. Bassin*, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

Under either statute providing for award of pre-judgment interest on liquidated debts or statute permitting discretionary award of prejudgment interest, purchaser of used car at public auction was entitled to award of prejudgment interest in his conversion action against District of Columbia; admitted fair market value of vehicle plus uncontested amount spent on repairs prior to conversion was a "liquidated debt," and award of interest was required to make buyer whole. *Teel v. District of Columbia*, 132 WLR 2145 (Super. Ct. 2004).

Purpose.

Interest is not imposed on a debtor's obligation in order to exact a penalty, but is imposed

to compensate creditor for loss of use of its money. *District of Columbia v. Potomac Electric Power Co.*, 402 A.2d 430, 1979 D.C. App. LEXIS 377 (1979).

Rate of interest.

Bank customer's insurer, as customer's subrogee, was entitled to prejudgment interest on bank's liquidated debt to customer, arising from bank's breach of its contract of deposit in charging customer's account for amount that bank paid on forged checks drawn against customer's account, at rate that bank was contractually obliged to pay customer; regardless of care that bank exercised in handling fraudulent checks, bank bore risk of loss due to forged drawer signature. *National Union Fire Ins. Co. v. Riggs Nat'l Bank*, 93 F.3d 885, 1996 U.S. App. LEXIS 21971 (C.A.D.C. 1996).

Statutory limit on prejudgment interest applies to liquidated and unliquidated sums, and in absence of express contractual provision, interest at a greater rate cannot be awarded on judgment for liquidated debt. D.C. Code 1981, §§ 15-108, 15-109, 28-3302. *District of Columbia v. Pierce Associates, Inc.*, 527 A.2d 306, 1987 D.C. App. LEXIS 372 (1987).

Notwithstanding claim that, because appropriations limitation foreclosed it from making fuel adjustment payments to electric utility, District of Columbia was without fault in withholding money and, therefore, should not be penalized by assessment of interest, where utility was without use of sums from days on which they fell, with District correspondingly having use of such funds, trial court properly ordered prejudgment interest at rate of 4% computed from date each monthly payment for street lighting fell due. D.C. Code § 15-108. *District of Columbia v. Potomac Electric Power Co.*, 402 A.2d 430, 1979 D.C. App. LEXIS 377 (1979).

Time from which interest runs.

Prejudgment interest due public contractor because of transit authority's withholding of excessive amount of progress payments ran from date on which transit authority's general manager made its final decision as to how much would be withheld from progress payments. *General Ry. Signal Co. v. Washington Metropolitan Area Transit Authority*, 875 F.2d 320, 1989 U.S. App. LEXIS 6535 (C.A.D.C. 1989), writ of certiorari denied by 494 U.S. 1056, 110 S. Ct. 1524, 108 L. Ed. 2d 764, 1990 U.S. LEXIS 1629, 58 U.S.L.W. 3614 (1990).

Pedestrian, who was injured when struck by automobile driven by unlicensed teenage driver and who subsequently obtained judgment against owners of automobile, failed to establish that extent of owners' liability was easily ascertainable at time initial unsatisfied judgment against driver became due and payable, and thus was entitled under District of Colum-

bia law to prejudgment interest accruing from date of latter rather than prior judgment. *Athridge v. Iglesias*, 382 F.Supp.2d 42, 2005 U.S. Dist. LEXIS 16662 (2005).

Regardless of whether interest for the period between oral announcement of ruling and entry of written judgment was proper as postjudgment interest, award could be sustained as permissible prejudgment interest, as trial court, in determining to have judgment bear interest nunc pro tunc from date of oral decision, effectively made optional determination that amount of interest awarded was the correct figure to compensate plaintiff in amount

that would make plaintiff whole as of the date of the oral decision. D.C. Code 1981, §§ 15-108, 15-109. *Riggs Nat'l Bank v. Carl G. Rosinski Co.*, 596 A.2d 997, 1991 D.C. App. LEXIS 269 (1991).

District's acknowledged, uncontested final payment for construction work was a liquidated debt, and therefore contractor was entitled to prejudgment interest from date debt became due and payable. D.C. Code 1981, § 15-108. *District of Columbia v. Pierce Associates, Inc.*, 527 A.2d 306, 1987 D.C. App. LEXIS 372 (1987).

§ 15-109. Interest on judgment for damages in contract or tort.

In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgment only. This section does not preclude the jury, or the court, if the trial be by the court, from including interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. In an action to recover damages for a wrong the judgment for the plaintiff shall bear interest.

(Aug. 30, 1964, 78 Stat. 677, Pub. L. 88-509, § 3(b)(1).)

Prior Codifications. — 1981 Ed., § 15-109.

1973 Ed., § 15-109.

CASE NOTES

ANALYSIS

Breach of contract.

Choice of law.

Discretion of court.

Equitable adjustments.

In general.

Inclusion to fully compensate victim.

Necessity of finality.

Rate of interest.

Review.

Time from which interest runs.

Breach of contract.

Under District of Columbia law, award of prejudgment interest in favor of former school district employee on sum representing unpaid salary and unused annual leave was warranted in employee's breach of contract suit; the sum was easily ascertainable, no basis was offered for withholding it, employee had been deprived of that money for the five years since the date of his termination, and he had commenced suit without undue delay. *Winder v. District of Columbia*, 555 F.Supp.2d 103, 2008 U.S. Dist. LEXIS 41093 (2008).

Under District of Columbia law, relevant considerations in determining whether to make an award of prejudgment interest in a breach of

contract action include whether the plaintiff has been deprived of the use of the money withheld, whether he timely commenced suit, and the certainty of the amount due. *Winder v. District of Columbia*, 555 F.Supp.2d 103, 2008 U.S. Dist. LEXIS 41093 (2008).

District of Columbia law permits an award of prejudgment interest when there was a contractual relationship between parties, but action was not framed as a breach of contract action. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 398 F.Supp.2d 147, 2005 U.S. Dist. LEXIS 25162 (2005).

Under District of Columbia law, insurer could recover prejudgment interest in its action against insured and insurance broker for unjust enrichment, negligent misrepresentation, and declaration that coverage did not exist under insured's commercial general liability (CGL) policy. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 398 F.Supp.2d 147, 2005 U.S. Dist. LEXIS 25162 (2005).

Real estate broker was entitled to recover \$200,000 of agreed-upon commission, plus interest, as measure of damages for breach of commission agreement. D.C. Code 1981, § 15-109. *Reiman & Co. v. Eromanga Invest., N.V.*, 622 F. Supp. 13, 1985 U.S. Dist. LEXIS 23478 (1985).

Attorney was not entitled to prejudgment interest on judgment in breach of contract action brought against client who did not pay for services rendered, absent evidence that prejudgment interest was necessary to fully compensate attorney. D.C. Code 1981, § 15-109. *Schwartz v. Swartz*, 723 A.2d 841, 1998 D.C. App. LEXIS 252 (1998).

Where suit for an accounting, although not framed as breach of contract action, was based on contractual relationship between the parties and jury was instructed to consider five-year delay between commencement of litigation and judgment and uncertainty of amount of damages as weighing against award of interest, jury was properly permitted to award prejudgment interest which was less than half of interest sought by prevailing party. *House of Wines, Inc. v. Sumter*, 510 A.2d 492, 1986 D.C. App. LEXIS 340 (1986).

Choice of law.

Issue of plaintiff's entitlement to prejudgment interest was substantive matter, and thus was governed by forum law in action under court's diversity jurisdiction. *Burlington Ins. Co. v. Okie Dokie, Inc.*, 398 F.Supp.2d 147, 2005 U.S. Dist. LEXIS 25162 (2005).

In action in district court for District of Columbia by commodity futures brokerage firm against former customer for amount allegedly due and owing on commodity futures brokerage account, District of Columbia law on subject of prejudgment interest would be applied despite choice of law provision in customer's agreement specifying that New York law would be applied, in view of fact that brokerage firm was Delaware corporation, customer was Pennsylvania domiciliary who formerly resided in Virginia and worked in Washington D.C. area, parties entered into contractual arrangement in Washington D.C. and futures transactions between parties took place through Washington D.C. office of brokerage firm. *E. F. Hutton & Co. v. Burkholder*, 413 F. Supp. 852, 1976 U.S. Dist. LEXIS 15002 (1976).

Discretion of court.

Under District of Columbia law, an award of prejudgment interest in a breach of contract action is within the broad discretion of the trial court. *Winder v. District of Columbia*, 555 F.Supp.2d 103, 2008 U.S. Dist. LEXIS 41093 (2008).

Equitable adjustments.

Equitable adjustment clause in 1974 construction contract did not authorize award of prejudgment interest against Washington Metropolitan Area Transit Authority (WMATA); as of 1974, courts and Board of Contract Appeals had not allowed recovery of interest foregone on equity capital as cost of performance, so that when parties executed contract against back-

ground of these decisions, parties did not intend their contract to provide for prejudgment interest as part of contractor's equitable adjustment. *Nello L. Teer Co. v. Washington Metro. Area Transit Auth.*, 921 F.2d 300, 1990 U.S. App. LEXIS 21291 (C.A.D.C. 1990), remanded by 995 F.2d 305, 301 U.S. App. D.C. 405, 1993 U.S. App. LEXIS 21393 (1993).

Proper rate of prejudgment interest due public contractor with respect to equitable adjustment of contract was six percent pursuant to District of Columbia statute limiting rate of interest upon loan or forbearance of money, goods or things in action to six percent per annum in the absence of express contract. D.C. Code 1981, § 28-3302. *General Ry. Signal Co. v. Washington Metropolitan Area Transit Authority*, 875 F.2d 320, 1989 U.S. App. LEXIS 6535 (C.A.D.C. 1989), writ of certiorari denied by 494 U.S. 1056, 110 S. Ct. 1524, 108 L. Ed. 2d 764, 1990 U.S. LEXIS 1629, 58 U.S.L.W. 3614 (1990).

Where disputed contract included implied condition requiring equitable adjustments of claims under contract within reasonable period of time, failure to comply with such condition could give rise to claim against transit authority for interest under parties' contract, and there was no substantial evidence to support transit authority's finding that there had been no unreasonable delay, and thus interest was properly given as against transit authority under contract pursuant to applicable District of Columbia law. D.C. Code 1973, §§ 15-108, 15-109. *General Ry. Signal Co. v. Washington Metropolitan Area Transit Authority*, 664 F.2d 296, 1980 U.S. App. LEXIS 11597 (C.A.D.C. 1980), writ of certiorari denied by 452 U.S. 915, 101 S. Ct. 3049, 69 L. Ed. 2d 418, 1981 U.S. LEXIS 2394, 49 U.S.L.W. 3911 (1981).

Statute governing award of interest in actions to recover for breach of contract did not apply to public contractor's suit against Washington Metropolitan Area Transit Authority (WMATA) that was brought under contract to recover for equitable adjustments. D.C. Code 1981, § 15-109. *Washington Metro. Area Transit Auth. v. Nello L. Teer Co.*, 618 A.2d 128, 1992 D.C. App. LEXIS 314 (1992).

Award of "additional profit" to public contractor by the Army Corps of Engineers Board of Contract Appeals for equitable adjustments under contract with Washington Metropolitan Area Transit Authority (WMATA) was award of prejudgment interest to contractor, regardless of label of award. *Washington Metro. Area Transit Auth. v. Nello L. Teer Co.*, 618 A.2d 128, 1992 D.C. App. LEXIS 314 (1992).

In general.

Neither common law nor District of Columbia Code provides for award of prejudgment interest in tort actions in District of Columbia.

Schneider v. Lockheed Aircraft Corp., 658 F.2d 835, 1981 U.S. App. LEXIS 12248 (C.A.D.C. 1981), writ of certiorari denied by 455 U.S. 994, 102 S. Ct. 1622, 71 L. Ed. 2d 855, 1982 U.S. LEXIS 1194, 50 U.S.L.W. 3696 (1982).

District court has broad discretion to award prejudgment interest. Burlington Ins. Co. v. Okie Dokie, Inc., 398 F.Supp.2d 147, 2005 U.S. Dist. LEXIS 25162 (2005).

Medical malpractice plaintiff was entitled to interest on damages award from the date of the jury's verdict, where the initial judgment and verdict was vacated by the trial court, then reinstated on appeal, which led to the entry of a second judgment. Chidel v. Hubbard, 840 A.2d 689, 2004 D.C. App. LEXIS 3 (2004).

"Prejudgment interest" is an element of complete compensation to a creditor for the loss of use of money that a debtor wrongfully withholds. Dist. Cablevision Ltd. P'shp v. Bassin, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

Statutes providing for "prejudgment interest" are remedial and should be generously construed so that the wronged party can be made whole. Dist. Cablevision Ltd. P'shp v. Bassin, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

Consumers', who sued for liquidated debt of sum total of unreasonably high \$5.00 late fees paid to cable company in class action suit brought pursuant to Consumer Protection Procedures Act (CPPA), were entitled to recover pre-judgment interest on the balance between total sum and setoff for actual damages cable company incurred due to late payment, pursuant to the interest on the net balance rule. Dist. Cablevision Ltd. P'shp v. Bassin, 828 A.2d 714, 2003 D.C. App. LEXIS 471 (2003).

The purpose of awarding prejudgment interest as part of the damages for breach of contract is to compensate the creditor for the loss of the use of money over time. Fed. Mktg. Co. v. Va. Impression Prods. Co., 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Strictly speaking, an award of prejudgment interest is not mandatory where the claim is unliquidated and interest is not specifically required by the contract itself or by law or prevailing usage. Fed. Mktg. Co. v. Va. Impression Prods. Co., 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Competitor's contempt by violating consent decree that prohibited competitor from conducting business in the District of Columbia in the trade name owner's name did not entitle owner to prejudgment interest; the decree specified the remedy for its violation and omitted any provision for such interest even though the parties recognized that an accounting for improper profits could cover a period of several years, the trial court could view an award without interest as sufficient, especially since

the owner did not show that it would have earned any more profits itself if the competitor had complied with its obligations, and the owner was dilatory in seeking to enforce its rights under the decree. Fed. Mktg. Co. v. Va. Impression Prods. Co., 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Trial court could not order payment of more than \$12,000 in alimony arrears by former husband at a rate of \$50 a month without awarding pre- or post-judgment interest and without making any findings regarding basis for its decision to spread payment over such a long period of time; failure to award interest effectively deprived former wife of full value of money owed her. Li v. Lee, 817 A.2d 841, 2003 D.C. App. LEXIS 90 (2003).

Prejudgment interest is generally regarded as merely another element of damages. Schwartz v. Swartz, 723 A.2d 841, 1998 D.C. App. LEXIS 252 (1998).

Trial court had power to award optional prejudgment interest in a contract liquidated damages case, though absence of any "contract or law or usage" calling for interest could be relevant to determination of whether award of optional interest would be necessary to fully compensate the plaintiff. D.C. Code 1981, §§ 15-108, 15-109. Riggs Nat'l Bank v. Carl G. Rosinski Co., 596 A.2d 997, 1991 D.C. App. LEXIS 269 (1991).

Prejudgment interest is available in contract actions where no liquidated debt exists or where interest is not stated in the contract or by law or usage. D.C. Code 1981, § 15-109. District of Columbia v. Pierce Associates, Inc., 527 A.2d 306, 1987 D.C. App. LEXIS 372 (1987).

Prejudgment interest may be awarded in cases where no clear contractual relationship exists. House of Wines, Inc. v. Sumter, 510 A.2d 492, 1986 D.C. App. LEXIS 340 (1986).

Prejudgment interest may be awarded in a breach of contract case if necessary to fully compensate the plaintiff. Blake Constr. Co. v. C. J. Coakley Co., 431 A.2d 569, 1981 D.C. App. LEXIS 299 (1981).

Court of Appeals Rule 37 application need not be made in order for interest to be awarded and a trial court has jurisdiction to render such an award when the Court of Appeals' mandate is silent on the question of interest. Strand v. Frenkel, 115 WLR 2205 (Super. Ct. 1985).

Inclusion to fully compensate victim.

For purposes of entitlement to prejudgment interest with respect to depository bank's allowing employee of corporate customer to open a corporate account without any documentation and taking for deposit in that account checks on missing or forged endorsements, amount for breach of contract claim was not liquidated, but, under District of Columbia law, prejudg-

ment interest would be allowable on conversion claim to extent that it would make the injured party whole. D.C. Code 1981, §§ 15-108, 15-109. *Kuwait Airways Corp. v. American Sec. Bank, N.A.*, 890 F.2d 456, 1989 U.S. App. LEXIS 17944 (C.A.D.C. 1989).

Law firm that successfully challenged its allocation from aggregate attorney fee award in antitrust class action litigation against vitamin manufacturers was not entitled, under District of Columbia law, to prejudgment interest on additional fees that district court had awarded to it due to court's determination that co-lead counsel abused its discretion in determining amount of law firm's allocation, given that court's award reflected compromise between unacceptable alternatives of doing nothing or reallocating entire fee award, such that award of prejudgment interest on amount of additional award was not required to make law firm whole. *In re Vitamins Antitrust Litig.*, 398 F.Supp.2d 209, 2005 U.S. Dist. LEXIS 24481 (2005).

Under District of Columbia statute governing award of prejudgment interest in contract and conversion actions, fundamental criterion guiding the exercise of discretion to award prejudgment interest is whether plaintiff will be fully compensated without it. *In re Vitamins Antitrust Litig.*, 398 F.Supp.2d 209, 2005 U.S. Dist. LEXIS 24481 (2005).

While the general rule may be that prejudgment interest is usually unavailable in breach of contract cases involving unliquidated claims, the court has ample discretion to include prejudgment interest as an element in the damages awarded, if necessary to fully compensate the plaintiff. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

A court has discretion to order a civil contemnor to pay prejudgment interest when such an award is necessary to compensate fully the party aggrieved; civil contempt sanctions serve a remedial purpose, and no explicit statutory authorization is required for an award of prejudgment interest. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Under statute authorizing inclusion of interest in damages awarded in action on contract if necessary to fully compensate the plaintiff, where home purchasers had to borrow money to replace defective furnace system which had been guaranteed to be in good working condition at time of settlement, inclusion of interest charged for borrowing money to replace furnace as a part of purchasers' damages was not abuse of discretion. D.C. Code § 15-109. *Noel v. O'Brien*, 270 A.2d 350, 1970 D.C. App. LEXIS 352 (App. 1970).

Under either statute providing for award of pre-judgment interest on liquidated debts or

statute permitting discretionary award of pre-judgment interest, purchaser of used car at public auction was entitled to award of pre-judgment interest in his conversion action against District of Columbia; admitted fair market value of vehicle plus uncontested amount spent on repairs prior to conversion was a "liquidated debt," and award of interest was required to make buyer whole. *Teel v. District of Columbia*, 132 WLR 2145 (Super. Ct. 2004).

Necessity of finality.

An express determination of finality was required before interest could accrue on a judgment entered while third-party claims remained pending. D.C. Code § 15-109; 18 U.S.C. § 1961; Fed.Rules Civ.Proc. Rule 54(b), 18 U.S.C. Hooks v. Washington Sheraton Corp., 642 F.2d 614, 1980 U.S. App. LEXIS 13214 (C.A.D.C. 1980).

Rate of interest.

Under District of Columbia law, in action for breach of contract, architecture firm was entitled to award of prejudgment interest, at prime rate in effect on date interest began to accrue, for work for which fees had been agreed in advance. D.C. Code 1981, § 15-109. *Shalom Baranes Assocs., P.C. v. 900 F St. Corp.*, 940 F. Supp. 1, 1996 U.S. Dist. LEXIS 14782 (1996).

Statutory limit on prejudgment interest applies to liquidated and unliquidated sums, and in absence of express contractual provision, interest at a greater rate cannot be awarded on judgment for liquidated debt. D.C. Code 1981, §§ 15-108, 15-109, 28-3302. *District of Columbia v. Pierce Associates, Inc.*, 527 A.2d 306, 1987 D.C. App. LEXIS 372 (1987).

Review.

Former employee was not entitled to prejudgment interest, under District of Columbia code provision allowing interest as necessary to fully compensate employee, on unliquidated debts former employer owed to her as sales commissions and other compensation; employee neither requested jury to determine interest issue nor objected to instructions that were silent as to interest, even though federal rules required jury determination regarding interest. *Fudali v. Pivotal Corp.*, 623 F.Supp.2d 11, 2008 U.S. Dist. LEXIS 108912 (2008).

Even if interest statute should be construed to permit prejudgment interest in tort actions, such interest would be element in damages award; therefore, plaintiff, who signed praecipe confirming that judgment had been paid and satisfied and who accepted lump-sum jury award for which prejudgment interest, applicable at best only to unknown portion of award, no longer could be calculated without reopening settled award, was estopped from pursuing prejudgment interest issue on appeal. D.C.

Code 1981, § 15-109. *George Hyman Constr. Co. v. Di Nicola*, 514 A.2d 1180, 1986 D.C. App. LEXIS 422 (1986).

Personal injury plaintiff, could have preserved prejudgment interest issue for appeal by: accepting some or all of the award subject to agreed stipulation that prejudgment interest issue would be appealed and if there were retrial on damages, party left in debtor position would pay balance due; declining to accept award with resulting possibility that on appeal remand would be available for new trial on damages; or asking for instruction requiring jury to divide its award between pretrial and post-trial injuries and then accepting award attributable to post-trial and receiving new trial on pretrial damages. *George Hyman Constr. Co. v. Di Nicola*, 514 A.2d 1180, 1986 D.C. App. LEXIS 422 (1986).

Time from which interest runs.

Prejudgment interest due public contractor because of transit authority's withholding of excessive amount of progress payments ran from date on which transit authority's general manager made its final decision as to how much would be withheld from progress payments. *General Ry. Signal Co. v. Washington Metropolitan Area Transit Authority*, 875 F.2d 320, 1989 U.S. App. LEXIS 6535 (C.A.D.C. 1989), writ of certiorari denied by 494 U.S. 1056, 110 S. Ct. 1524, 108 L. Ed. 2d 764, 1990 U.S. LEXIS 1629, 58 U.S.L.W. 3614 (1990).

Period for which contractor was entitled to statutory interest on claim for additional realignment work done, with respect to contract for construction of part of Washington, D.C. subway system, for contracting officer's unreasonable delay in processing claim, was from completion of additional work until time of final payment, where payment had been demanded before additional work had been completed; contractor was not limited to recovering interest on award only for period of unreasonable delay. D.C. Code 1981, § 15-109. *Granite Groves v. Washington Metropolitan Area Transit Authority*, 845 F.2d 330, 1988 U.S. App. LEXIS 5408 (C.A.D.C. 1988).

Commodity futures brokerage firm was entitled to interest on judgment rendered for amount due and owing from former customer on commodity futures brokerage account, but, under District of Columbia law, interest would run from date of judgment only, in view of uncertainty as to amount due broker and lapse

of time between trial and judgment. D.C. Code § 15-109. *E. F. Hutton & Co. v. Burkholder*, 413 F. Supp. 852, 1976 U.S. Dist. LEXIS 15002 (1976).

Since the issue of prejudgment interest was not argued at trial of insured's claim to recover, under insurance policy, a stipulated business interruption loss for restaurant destroyed by fire, and since no evidence was submitted on that question, no award of interest would be allowed the insured except from the date of judgment. D.C. Code § 15-109. *Emersons, Ltd. v. Max Wolman Co.*, 388 F. Supp. 729, 1975 U.S. Dist. LEXIS 14153 (1975), affirmed without opinion by 530 F.2d 1093, 174 U.S. App. D.C. 241 (1976).

Regardless of whether interest for the period between oral announcement of ruling and entry of written judgment was proper as postjudgment interest, award could be sustained as permissible prejudgment interest, as trial court, in determining to have judgment bear interest nunc pro tunc from date of oral decision, effectively made optional determination that amount of interest awarded was the correct figure to compensate plaintiff in amount that would make plaintiff whole as of the date of the oral decision. D.C. Code 1981, §§ 15-108, 15-109. *Riggs Nat'l Bank v. Carl G. Rosinski Co.*, 596 A.2d 997, 1991 D.C. App. LEXIS 269 (1991).

Prejudgment and presettlement interest on postdissolution partnership debts is not generally allowed as a matter of right, but trial judge may make an award of such interest if the equities of the individual case so require. *Warren v. Chapman*, 535 A.2d 856, 1987 D.C. App. LEXIS 515 (1987).

Interest on a plaintiff's judgment vacated by trial court, but reinstated after appeal by a mandate which does not mention interest, should not be made to run from date verdict and judgment are reinstated, but should be made to run from date of verdict and original judgment. D.C. Code 1981, § 15-109; Court of Appeals Rule 37. *Bell v. Westinghouse Electric Corp.*, 507 A.2d 548, 1986 D.C. App. LEXIS 312 (1986).

Trial court did not abuse its discretion in awarding subcontractor interest from the date of contractor's breach of the subcontract rather than from the date of judgment entry. *Blake Constr. Co. v. C. J. Coakley Co.*, 431 A.2d 569, 1981 D.C. App. LEXIS 299 (1981).

§ 15-110. Interest on judgment on contracts made elsewhere.

In an action on a contract for the payment of a higher rate of interest than is lawful in the District, made or to be performed in a State or territory of the

United States where such a contract rate of interest is lawful, the judgment for the plaintiff shall include the contract interest to the date of the judgment and interest thereafter at the rate of 6 per cent per annum until paid.

(Aug. 30, 1964, 78 Stat. 678, Pub. L. 88-509, § 3(b)(1).)

Prior Codifications. — 1981 Ed., § 15-110. 1973 Ed., § 15-110.

CASE NOTES

In general.

Trial court should have followed D.C. Code 1981, § 15-110, requiring that judgment include interest in action on contract for payment of higher rate of interest than is lawful in District where such contract rate of interest is lawful in the place where the contract was

made or is to be performed, and granted request for postjudgment interest, where, because note was payable in Maryland, interest rate of 20.9 percent was lawful. Md.Code, Commercial Law, § 12-306(a)(3); D.C. Code 1981, § 15-110. *Finance America Corp. v. Moyler*, 494 A.2d 926, 1985 D.C. App. LEXIS 413 (1985).

§ 15-111. Counsel fee in proceeding on bond or undertaking.

In a proceeding in the United States District Court for the District of Columbia or the Superior Court of the District of Columbia to recover damages upon a bond or undertaking given to obtain a restraining order or preliminary or pendente lite injunction, the Court, in assessing damages to be recovered thereunder, may include such reasonable counsel fees as the party damaged by the restraining order or injunction may have incurred in obtaining a dissolution thereof.

(Aug. 30, 1964, 78 Stat. 678, Pub. L. 88-509, § 3(b)(1); July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(3).)

Prior Codifications. — 1981 Ed., § 15-111. 1973 Ed., § 15-111.

CASE NOTES

In general.

Grant of deed of trust owner's motion for costs and attorney's fees in amount of bond posted by homeowners to prevent foreclosure, was proper given extensive legal proceedings

and period of more than three years for which deed of trust owner was without use of money owed her. D.C. Code 1981, § 15-111; Civil Rule 65(c). *Taylor v. Frenkel*, 499 A.2d 1212, 1985 D.C. App. LEXIS 552 (1985).

§§ 15-131 to 15-133. Judgments and executions generally; interest; enforceable period of unrecorded judgments; enforcement of judgments, etc., of the District of Columbia Court of General Sessions; satisfaction of judgment; recordation [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(4)(A).)

Prior Codifications. — 1981 Ed., §§ 15-131 to 15-133.

CHAPTER 3. ENFORCEMENT OF JUDGMENTS AND DECREES.

Subchapter I. Local Judgments and Decrees

Sec.

- 15-301. Definition and applicability.
- 15-302. Period during which writ of execution may issue; returnable period.
- 15-303. Alias writs.
- 15-304. Return of writ.
- 15-305. Issuance of writ after expiration of period.
- 15-306. Election to move for new judgment in lieu of execution.
- 15-307. Lien of execution.
- 15-308. Endorsement, by marshal, of date of receipt of writ.
- 15-309. Death of judgment debtor after delivery of execution.
- 15-310. [Repealed].
- 15-311. Property subject to levy.
- 15-312. Levy on money and evidences of debt.
- 15-313. Levy on equitable interest in chattels pledged.
- 15-314. Appraisement; notice of sale.
- 15-315. Death, removal, or disqualification of marshal.
- 15-316. Subrogation of purchaser after defective sale; no refund.
- 15-317. Remedy of marshal for erroneous sale made in good faith.
- 15-318. Remedies of purchaser upon refusal to deliver possession.
- 15-319. Execution of final decree after death; other appropriate proceedings.
- 15-320. Enforcement of decrees.
- 15-321. Enforcement of interlocutory decrees.

Sec.

- 15-322. Enforcement of decrees for delivery of chattels.
- 15-323. Limitation on seizure of real property.

Subchapter II. Foreign Judgments

- 15-351. Definitions.
- 15-352. Filing and status of foreign judgments.
- 15-353. Notice of filing.
- 15-354. Stay.
- 15-355. Fees.
- 15-356. Optional procedure.
- 15-357. Uniformity of interpretation.

Subchapter II-A. Uniform Foreign-Country Money Judgments

- 15-361. Short title.
- 15-362. Definitions.
- 15-363. Applicability.
- 15-364. Standards for recognition of foreign-country judgment.
- 15-365. Personal jurisdiction.
- 15-366. Procedure for recognition of foreign-country judgment.
- 15-367. Effect of recognition of foreign-country judgment.
- 15-368. Stay of proceedings pending appeal of foreign-country judgment.
- 15-369. Statute of limitations.
- 15-370. Uniformity of interpretation.
- 15-371. Saving clause.

Subchapter III. Uniform Foreign-Money Judgments

- 15-381 to 15-388. [Repealed].

Subchapter I. Local Judgments and Decrees.

§ 15-301. Definition and applicability.

As used in sections 15-302, 15-303, 15-305 to 15-307, 15-309, 15-317, and 15-318, "judgment" includes an unconditional decree for the payment of money, and sections 15-302 to 15-318 are applicable to such a decree.

(Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(6)(B).)

Prior Codifications. — 1981 Ed., § 15-301. 1973 Ed., § 15-301.

CASE NOTES

In general.

Where collection agency practices terminated by Court of Appeals had been long carried on without judicial disapproval and where judgments

had been valid under law existing when they were rendered, decision terminating such practices would not be applied retroactively. (Per Gallagher, A. J., with one Judge concur-

ring and one Judge dissenting.) Kelly Adjustment Co. v. Boyd, 342 A.2d 361, 1975 D.C. App. LEXIS 436 (1975).

§ 15-302. Period during which writ of execution may issue; returnable period.

(a) A writ of execution on a judgment in a civil action may be issued within three years after:

- (1) the expiration of any stay of execution agreed to by the parties; or
- (2) it first might have been issued under applicable provisions of law or rules of court.

(b) A writ of execution shall be returnable on or before the sixtieth day after its date.

(Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1.)

Cross references. — Disability insurance benefits, exemption from execution, see § 31-4716.01.

Exemptions from executions generally, see § 15-101 et seq.

forfeited recognizances and judgments, executions upon, see § 16-709.

Fraternal benefit association benefits, exemption from execution, see § 31-5711.

Group life policies and proceeds, exemption from execution, see § 31-4717.

Landlord's lien for rent, enforcement by execution, see §§ 42-3214 and 42-3215.

Public assistance, exemption from assignment and execution, see § 4-217.01.

Seizure by execution of goods located on

leased premises, payment of rent due as prerequisite, see § 42-3216.

Teacher retirement annuities, exemption from assignment or execution, see § 38-2001.17.

Unemployment compensation benefits, exemption from execution, except for debts accrued for necessities, see § 51-118.

Wrongful death damages, exemption from appropriation for payment of debts and liabilities, see § 16-2703.

Section references. — This section is referred to in §§ 15-301 and 15-303.

Prior Codifications. — 1981 Ed., § 15-302. 1973 Ed., § 15-302.

CASE NOTES

In general.

For purpose of statute providing that writ of execution may be issued within three years after it first might have been issued under applicable provisions of law, term "applicable provisions of law" was not so broad as to include law relating to legality of serving writ upon United States such as 1974 Social Services Amendments Act allowing garnishment of wages of federal employee to satisfy legal obligation for child support; term "applicable provisions of law" related to status or quality of judgment rather than to the subject of possible writ of execution on the judgment. D.C. Code § 15-302. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

Even if judgment creditor had made showing that all of debtor's assets were immune from attachment in aid of execution until effective date of Social Services Amendments Act allowing garnishment of wages of federal employee to satisfy legal obligation for child support, Act did not extend period prescribed by statutes

governing enforceable period of judgment and issuance of writ of execution. D.C. Code §§ 15-101, 15-302, 15-302(a)(2); D.C. Code 1961, § 15-201. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

At time support order was entered, life of unrecorded judgment of juvenile court was governed by six-year period rather than three-year period governing issuance of writ of execution, and at no time subsequent to such order was three-year period intended to govern life of unrecorded judgment. D.C. Code §§ 15-101, 15-132, 15-302. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

Service of writ upon employer by judgment debtor did not purport to disburse wages of debtor to judgment creditor but required employer to pay certain wages to clerk of court pending decision as to disbursement of funds to judgment creditor; thus, writ was not a writ of execution but a writ of attachment such that three-year period relating to issuance of writ of execution was irrelevant to issue of whether

writ of attachment properly issued. D.C. Code §§ 15-302, 15-305, 16-543. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

Judgment creditor's inability to garnish wages of judgment debtor who was a federal employee until effective date of act allowing garnishment of wages to enforce legal obligation to provide child support had no effect upon

life of judgments upon which judgment creditor ultimately sought to execute and no effect upon necessity to revive judgment prior to issuing writ of execution. D.C. Code §§ 15-101, 15-302, 15-305, 16-543; Social Services Amendments of 1974, § 459, 88 Stat. 2337. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

§ 15-303. Alias writs.

If a writ of execution is issued and returned unsatisfied, in whole or in part, within the period of three years provided by section 15-302, an alias writ may be issued during the life of the judgment.

(Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1.)

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-303. 1973 Ed., § 15-303.

§ 15-304. Return of writ.

If the return of a writ of execution is not made on or before the return day expressed in the writ it may nevertheless be made afterwards as of that date.

(Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1.)

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-304. 1973 Ed., § 15-304.

§ 15-305. Issuance of writ after expiration of period.

A writ of execution not issued within the time allowed therefor, may not be issued until the judgment has been revived. The same rule applies to the order of revival in relation to the issuance of a writ of execution as to the original judgment.

(Dec. 23, 1963, 77 Stat. 525, Pub. L. 88-241, § 1.)

Cross references. — Extension of lien of judgment or decree by order of revival, see § 15-102.

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-305. 1973 Ed., § 15-305.

CASE NOTES

In general.

Service of writ upon employer by judgment debtor did not purport to disburse wages of debtor to judgment creditor but required employer to pay certain wages to clerk of court pending decision as to disbursement of funds to judgment creditor; thus, writ was not a writ of execution but a writ of attachment such that three-year period relating to issuance of writ of

execution was irrelevant to issue of whether writ of attachment properly issued. D.C. Code §§ 15-302, 15-305, 16-543. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

Judgment creditor's inability to garnish wages of judgment debtor who was a federal employee until effective date of act allowing garnishment of wages to enforce legal obliga-

tion to provide child support had no effect upon life of judgments upon which judgment creditor ultimately sought to execute and no effect upon necessity to revive judgment prior to issuing writ of execution. D.C. Code §§ 15-101, 15-302,

15-305, 16-543; Social Services Amendments of 1974, § 459, 88 Stat. 2337. *Lomax v. Spriggs*, 404 A.2d 943, 1979 D.C. App. LEXIS 434 (1979).

§ 15-306. Election to move for new judgment in lieu of execution.

During the life of the original judgment the plaintiff, instead of issuing execution thereon within the time allowed therefor, may elect to obtain a new judgment by motion and hearing as provided by rules of court.

(Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1.)

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-306. 1973 Ed., § 15-306.

§ 15-307. Lien of execution.

A writ of fieri facias issued upon a judgment of the United States District Court for the District of Columbia or the Superior Court of the District of Columbia is a lien from the time of its delivery to the marshal upon all the goods and chattels of the judgment defendant, except those that are exempted from levy and sale by express provision of law, and is also a lien upon the equitable interest of the judgment defendant in goods and chattels in his possession.

(Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(5).)

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-307. 1973 Ed., § 15-307.

§ 15-308. Endorsement, by marshal, of date of receipt of writ.

Upon the receipt of any writ of fieri facias or other writ of execution, the marshal or his deputy shall, without fee, endorse upon the back of the writ the day of the month and year when he received it.

(Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1.)

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-308. 1973 Ed., § 15-308.

§ 15-309. Death of judgment debtor after delivery of execution.

The death of the judgment debtor after the execution issued on the judgment has been delivered to the marshal does not affect his authority to proceed against the property bound by it.

(Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1.)

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-309. 1973 Ed., § 15-309.

§ 15-310. Lien of execution on Court of General Sessions judgment; levy. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(6)(A).)

Prior Codifications. — 1981 Ed., § 15-310.

§ 15-311. Property subject to levy.

The writ of fieri facias may be levied on all goods and chattels of the debtor not exempt from execution, and upon money, bills, checks, promissory notes, or bonds, or certificates of stock in corporations owned by the debtor, and upon his money in the hands of the marshal or his deputy or other officer or person charged with the execution of the writ. A writ of fieri facias issued from the United States District Court for the District of Columbia or the Superior Court of the District of Columbia upon a judgment entered in such court may be levied on all legal leasehold and freehold estates of the debtor in land, but only after such judgment has been filed and recorded in the office of the Recorder of Deeds of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1; July 5, 1966, 80 Stat. 264, Pub. L. 89-493, § 12; Nov. 2, 1966, 80 Stat. 1178, Pub. L. 89-745, § 5; Mar. 11, 1968, 82 Stat. 42, Pub. L. 90-263, § 3; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(7).)

Cross references. — Disability insurance benefits, exemption from execution, see § 31-4716.01.

Exemptions from executions generally, see § 15-101 et seq.

Fraternal benefit association benefits, exemption from execution, see § 31-5711.

Group life policies and proceeds exemption from execution, see § 31-4717.

Notary's official seal and documents, exemption from execution, see § 1-1206.

Public assistance exemption from assignment or execution, see § 4-217.01.

Seizure by execution of goods located on

leased premises, payment of rent due as prerequisite, see § 42-3216.

Teacher retirement annuities, exemption from assignment or execution, see § 38-2001.17.

Unemployment compensation benefits, partial exemption from execution, see § 51-118.

Wrongful death damages, exemption from appropriation for payment of debts and liabilities, see § 16-2703.

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-311. 1973 Ed., § 15-311.

CASE NOTES

In general.

Judgment creditor's act of filing a judgment with recorder of deeds constitutes a lien on all freehold and leasehold estates, legal and equi-

table, of defendants bound by judgment. D.C. Code 1981, § 15-102(a). *Consumers United Ins. Co. v. Smith*, 644 A.2d 1328, 1994 D.C. App. LEXIS 103 (1994).

§ 15-312. Levy on money and evidences of debt.

When the fieri facias is levied on money belonging to the judgment debtor the marshal may not expose the money to sale, but shall account for it as money collected. Bills or other evidences of debt levied upon shall be sold as other personal property is sold, and the marshal may indorse them to pass title to the purchaser.

(Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1.)

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-312. 1973 Ed., § 15-312.

§ 15-313. Levy on equitable interest in chattels pledged.

The interest of the debtor in personal chattels lawfully pledged for the payment of a debt or performance of a contract, or held by a trustee, and in which the debtor's interest is only equitable, may be levied upon in the hands of the pledgee or trustee without disturbing the possession of the latter, and the lien thus obtained may be enforced by civil action. In other cases of equitable interest of the judgment debtor in personal chattels execution may also be levied thereon and the lien thus obtained may be enforced by civil action.

(Dec. 23, 1963, 77 Stat. 526, Pub. L. 88-241, § 1.)

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-313. 1973 Ed., § 15-313.

§ 15-314. Appraisement; notice of sale.

Where not herein otherwise provided, all property levied upon, except money, shall be appraised by two sworn appraisers and sold at public auction for cash.

Personal property may be sold after ten days' notice by advertisement, containing a description sufficiently definite to be embodied in a conveyance of title.

Leasehold and freehold estates in land may be sold after notice has been made in the manner provided by section 2002 of Title 28, United States Code.

(Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1.)

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-314. 1973 Ed., § 15-314.

CASE NOTES

Notice of sale.

Even if only substantial compliance with federal statute, stating that a notice must be published once a week for at least four weeks in a newspaper of general circulation before a public sale of realty occurred, was required

before judgment debtor's real property was sold at execution judgment to satisfy judgment creditor's lien, judgment creditor failed to substantially comply with such statute, where Marshall only published notice of sale on three days during a 14-day period, judgment debtor did

not receive notice of the date, time and place of the sale, and the property was sold for less than one-third of its value. *Steward v. Moskowitz*, 5 A.3d 638, 2010 D.C. App. LEXIS 556 (2010).

§ 15-315. Death, removal, or disqualification of marshal.

When the marshal dies, or is removed from office, or becomes otherwise disqualified from executing a writ of execution received by him, the writ may be executed and returned by his deputy or successor in office.

(Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1.)

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-315. 1973 Ed., § 15-315.

§ 15-316. Subrogation of purchaser after defective sale; no refund.

When, upon the sale of property under execution, the title of the purchaser is invalid by reason of a defect in the proceedings, the purchaser may be subrogated to the rights of the creditor against the debtor to the extent of the money paid by him and applied to the debtor's benefit, and to that extent has a lien on the property sold against all persons except bona fide purchasers without notice; but the creditor may not be required to refund the purchase money on account of the invalidity of the sale.

(Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1.)

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-316. 1973 Ed., § 15-316.

§ 15-317. Remedy of marshal for erroneous sale made in good faith.

When the marshal or any other officer to whom execution has been delivered levies upon and sells in good faith property not subject thereto and applies the proceeds thereof toward the satisfaction of the judgment, and a recovery is had against him for its value, the officer, on payment of the value, may, on motion and due notice thereof to the defendant, have the satisfaction of the judgment vacated, and execution shall issue thereon for his use as if the levy and sale had not been made.

(Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1.)

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-317. 1973 Ed., § 15-317.

§ 15-318. Remedies of purchaser upon refusal to deliver possession.

When real property is sold by virtue of an execution, and the judgment debtor or a person claiming under him since the rendition of the judgment is in actual possession of the property and refuses to deliver possession thereof to

the purchaser upon demand made therefor, the court, on the application of the purchaser, may:

(1) require the person so in possession to show cause why possession should not be delivered according to the demand; and

(2) if good cause is not shown, issue a writ of habere facias possessionem, requiring the marshal to put the purchaser in possession.

If the party in possession alleges under oath a title derived from the judgment debtor prior to the judgment or a title superior to that of the defendant, the writ may not issue, but the purchaser may have his remedy by an action of ejectment or the summary remedy in the Superior Court of the District of Columbia provided for in sections 16-1501 to 16-1505.

(Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(7).)

Section references. — This section is referred to in § 15-301.

Prior Codifications. — 1981 Ed., § 15-318. 1973 Ed., § 15-318.

§ 15-319. Execution of final decree after death; other appropriate proceedings.

When a party to an action dies after final decree, the court may order execution of the decree as if death had not occurred, or the court, after motion and hearing, may order the decree revived against the proper representatives of the deceased party, or make such other order or direct such other proceedings as seems best calculated to advance the purposes of justice. The heir or other proper representative may appear at any time before execution of the decree and be admitted as a party to the action, on such terms as the court prescribes, and such further proceeding may be had as may be appropriate to the merits of the cause.

(Dec. 23, 1963, 77 Stat. 527, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 15-319. 1973 Ed., § 15-319.

§ 15-320. Enforcement of decrees.

(a) For the purpose of executing a decree, or compelling obedience to it, the United States District Court for the District of Columbia or the Superior Court of the District of Columbia, in addition to the other procedures provided for by this chapter and Chapter 5 of Title 16, may:

(1) issue an attachment against the person of the defendant;

(2) order an immediate sequestration of his real and personal estate, or such part thereof as may be necessary to satisfy the decree; or

(3) by order and injunction, cause the possession of the estate and effects whereof the possession or a sale is decreed to be delivered to the complainant, or otherwise, according to the tenor and import of the decree and as the nature of the case requires.

In case of sequestration, the court may order payment and satisfaction to be

made out of the estate and effects so sequestered, according to the true intent and meaning of the decree.

(b) When a defendant is arrested and brought into court upon any process of contempt issued to compel the performance of a decree, the court may, upon motion, order:

(1) the defendant to stand committed; or

(2) his estates and effects to be sequestered and payment made, as directed by subsection (a) of this section; or

(3) possession of his estate and effects to be delivered by order and injunction, as directed by subsection (a) of this section — until the decree or order is fully performed and executed, according to the tenor and true meaning thereof, and the contempt cleared.

(c) Where a decree only directs the payment of money, the defendant may not be imprisoned except in those cases especially provided for.

(Dec. 23, 1963, 77 Stat. 528, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(7).)

Prior Codifications. — 1981 Ed., § 15-320. 1973 Ed., § 15-320.

Editor's notes. — Because of the codification of §§ 15-351—15-357 as subchapter II of

this chapter, and the designation of the preexisting text of Chapter 3 as subchapter I, “subchapter” should be substituted for “chapter” in the introductory language of (a).

CASE NOTES

ANALYSIS

Attorney fees.

Imprisonment.

In general.

Moot cases.

Review.

Trademark or trade name disputes.

Attorney fees.

Trade name owner forfeited its challenge to attorney fees awarded to enforce consent decree against competitor, where owner failed to contest in the trial court the special masters' decision to recommend \$34,500 cut in request and stated that it was generally satisfied with the special masters' recommendation. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

The trial court had the discretion to award attorney fees reasonably incurred by trade name owner to prosecute competitor for civil contempt of consent decree even absent a finding that competitor's violation of court order was willful and even absent a specific attorney's fee provision in the decree. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

No reversal or remand was required by the trial court's failure to articulate its reasoning further in awarding attorney fees of \$140,000 to trade name owner in proceeding to hold competitor in contempt for violating consent

decree; no claim was made that the hours worked were unreasonable or unrelated to the contempt proceeding or that the attorneys' billing rates were unreasonably high, the independent special masters evaluated the legal expenses and found them to be reasonable overall, and this primarily factual finding was not shown to be clearly erroneous. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Trade name owner's failure to succeed completely in its claims against competitor for violating consent decree and to win every legal ruling concerning laches defense and scope of decree did not require reduction in attorney fee award; the case was an exceptionally complex one that mandated an extensive investigation of the competitor's entire course of business conduct over many years in order to establish that noncompliance with the consent decree was truly contemptuous, the full scope of the noncompliance needed to be explored and defined, and the owner prevailed on the main point. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Though husband's appeal from order that he be imprisoned to compel him to pay his wife's counsel fees as ordered in final decree of divorce was not frivolous, wife was entitled to \$250 counsel fees on appeal. *Thunberg v. Thunberg*, 283 A.2d 444, 1971 D.C. App. LEXIS 235 (1971).

Statute providing for imprisonment for non-payment of counsel fees granted during pendency of divorce suit applied, and facts that divorce sought by husband was denied and that judgment provided for separate maintenance and support payments and for payment of wife's counsel fees by husband did not prevent enforcement of award of counsel fees. D.C. Code 1961, §§ 15-320, 16-911. *Edmonds v. Edmonds*, 212 A.2d 534, 1965 D.C. App. LEXIS 224 (App. 1965).

Imprisonment.

Former husband's motion to reduce support obligations ordered in divorce decree gave trial court sufficient notice that he might be unable to meet his obligations under order staying prison sentence for contempt of the support obligation and requiring that he pay a certain amount of the arrearages, and was in effect a request for relief from terms of the stay; therefore, finding that former husband had not proffered any defense or justification for his violation of the stay was plainly wrong and without evidence to support it, and thus trial court abused its discretion in revoking the stay and committing former husband to jail. D.C. Code §§ 11-944, 15-320(c), 16-911, 16-912, 16-916, 17-305(a). *Smith v. Smith*, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

In divorce action brought by wife, the court of general sessions had authority to imprison husband to compel him to pay his wife's counsel fees, pursuant to order contained in the final decree of divorce, despite contention that such order was not one made "during the pendency of an action." D.C. Code §§ 15-320, 16-911. *Thunberg v. Thunberg*, 283 A.2d 444, 1971 D.C. App. LEXIS 235 (1971).

Trial court could not commit husband for his contemptuous failure to comply with order for specific performance of agreement to pay wife \$200 monthly for her support though husband was able to make such payments but deliberately refused to carry out his agreement and money judgments against him could not be collected by ordinary process. D.C. Code §§ 15-320(c), 16-911, 16-912, 16-916. *O'Mara v. O'Mara*, 238 A.2d 586, 1968 D.C. App. LEXIS 129 (App. 1968).

In general.

As a voluntary settlement of a disputed claim, consent decree was to be construed within its four corners and enforced as written, absent a showing of good cause to set it aside, such as fraud, duress, or mistake. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Courts are to construe ambiguities and omissions in consent decrees as redounding to the benefit of the person charged with contempt.

Fed. Mktg. Co. v. Va. Impression Prods. Co., 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

As with any contract, the fact finder may examine extrinsic evidence to clarify genuine ambiguities in a consent decree. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

While a consent decree still must be construed within its four corners, courts have a duty to interpret ambiguous provisions, if possible, in light of what the evidence shows the parties themselves intended. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Although the court may hold a debtor in civil contempt to force compliance with a child support order, the trial court must predicate its application of such sanction on a finding that the defendant is able to pay the debt owed, considering all the circumstances of the case, including whether the defendant's asserted inability to pay is due to involuntary financial straits or a voluntary decision to reduce his or her income. D.C. Code §§ 11-944, 15-320(c), 16-911, 16-912, 16-916. *Smith v. Smith*, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

No further evidence besides husband's admission of failure to pay wife's counsel fees pursuant to judgment ordering husband, who had unsuccessfully sought divorce, to pay separate maintenance and support and counsel fees was necessary on issue of whether sums due under the judgment had been paid, in proceeding on motion by wife to hold husband in contempt. D.C. Code 1961, §§ 15-320, 16-911. *Edmonds v. Edmonds*, 212 A.2d 534, 1965 D.C. App. LEXIS 224 (App. 1965).

Moot cases.

Fact that prior to appeal former husband had served entire 30-day sentence for contempt for his failure to pay child support obligation did not render the case moot, despite fact that the proceeding was civil in nature, as it resulted in the penalty of imprisonment, and in view of fact that the only reason that the former husband had already served his term for contempt was that his request to stay the commitment order pending appeal had been refused. *Smith v. Smith*, 427 A.2d 928, 1981 D.C. App. LEXIS 221 (1981).

Review.

The trial court's resolution of the meaning of an ambiguous provision of a consent decree in light of extrinsic evidence is a factual finding that the Court of Appeals will not reverse unless it is plainly wrong or without evidence to support it. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Trademark or trade name disputes.

Trade name owner's alleged commercial inactivity and inability to suffer loss of profits or

other injury did not preclude it from enforcing its rights under consent decree that prohibited competitor from conducting business in the District of Columbia in the owner's corporate name, although the owner's alleged dormancy might have been relevant if the issue had been the right to an injunction against competitor in the first place; the competitor had consented to the injunction, and the settlement agreement entitled the owner to competitor's profits without proof of actual injury. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Lack of injury to trade name owner since it allegedly was commercially inactive and was not using the name was no defense to civil contempt against competitor for violating consent decree that prohibited competitor from conducting business in the District of Columbia in the owner's corporate name; the settlement agreement entitled the owner to competitor's profits without proof of actual injury if the competitor conducted business in the District of Columbia using owner's name. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Trial court ruling on trade name owner's petition to hold competitor in contempt for violating consent decree that enjoined competitor from conducting business in the District of Columbia in the owner's corporate name was in no position to dissolve the decree prospectively on the ground that the owner was an inactive business entity that no longer had an interest in its name to protect; the court had precluded the competitor from introducing evidence on whether the owner had ceased doing business. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Provision of consent decree requiring trade name owner's competitor to account for all profits made by it from conducting business in the District of Columbia using owner's name at any time was ambiguous and reasonably construed as applying only to sales or shipments to federal government offices that were located in the District of Columbia; the parties agreed to permit the competitor, while using the name, to continue doing business with the federal government outside the District of Columbia, and the parties and their lawyers knew that the competitor would still be required to submit bids to the General Services Administration (GSA) or proposed blanket purchase agreements to other agencies within the District as a precondition to carrying on such business else-

where. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Trial court ruling on laches defense could conclude that trade name owner was not vigilant and failed to exercise diligence in protecting rights under consent decree against competitor and that competitor was prejudiced by owner's delay before seeking to hold competitor in contempt for violating consent decree entered more than twelve years earlier, and, thus, the court could limit the owner's right to recover competitor's profits to a reasonable period of time, five years, before the owner filed petition; with virtually no effort, the owner could have learned that the competitor was using the owner's name in sales to federal government offices located in the District of Columbia in violation of the decree. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Trade name owner's competitor did not waive its affirmative defense of laches by failing to raise it in answer to owner's petition to enforce consent decree; the competitor put the owner on notice of its affirmative defense of laches in its summary judgment pleadings, the owner had and exercised a full and fair opportunity to meet it, and there was no prejudice. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

The doctrine of laches applied to trade name owner's petition to hold competitor in contempt for violating consent decree entered more than twelve years earlier, even though the owner owed no duty to monitor competitor's compliance with a court order. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Trade name owner failed to show clearly erroneous computation by the special masters to determine the profits that competitor earned in violation of consent decree that prohibited competitor from conducting business in the District of Columbia in the owner's corporate name; the masters carried out a massive eleven-month investigation into the extent and economic effect of competitor's non-compliance with the consent decree over a five-year period, and the owner's objections were essentially an attack on the violation criteria and the sampling technique that the masters reasonably chose to employ in order to obtain reliable results in a factually murky, retrospective investigation. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

§ 15-321. Enforcement of interlocutory decrees.

An interlocutory order may be enforced by such process as might be had

upon a final judgment or decree to the like effect, and the payment of costs adjudged to a party may be enforced in like manner.

(Dec. 23, 1963, 77 Stat. 528, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 15-321. 1973 Ed., § 15-321.

§ 15-322. Enforcement of decrees for delivery of chattels.

In addition to the procedures for enforcement of judgments or decrees otherwise provided for, an order or decree for the delivery of chattels may be enforced by the same writs as are used in the action of replevin at common law.

(Dec. 23, 1963, 77 Stat. 528, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 15-322. 1973 Ed., § 15-322.

§ 15-323. Limitation on seizure of real property.

Real property or rent shall not be seized for a debt, as long as the present goods and chattels of the debtor are sufficient to pay it, and the debtor himself is ready to satisfy the debt.

(Dec. 23, 1963, 77 Stat. 528, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 15-323. 1973 Ed., § 15-323.

Subchapter II. Foreign Judgments.

§ 15-351. Definitions.

For the purposes of this subchapter, the term:

- (1) "District" means the District of Columbia.
- (2) "Foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in the District.
- (3) "Superior Court" means the Superior Court of the District of Columbia.

(Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Prior Codifications. — 1981 Ed., § 15-351.

Legislative history of Law 8-173. — Law 8-173, the "Uniform Enforcement of Foreign Judgments Act of 1990," was introduced in Council and assigned Bill No. 8-56, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings

on June 26, 1990, and July 10, 1990, respectively. Signed by the Mayor on July 18, 1990, it was assigned Act No. 8-240 and transmitted to both Houses of Congress for its review.

Editor's notes. — Uniform Law: This section is based upon § 1 of the Uniform Enforcement of Foreign Judgments Act (1964).

§ 15-352. Filing and status of foreign judgments.

A copy of any foreign judgment authenticated in accordance with the laws of the District may be filed in the Office of the Clerk of the Superior Court

(“Clerk”). A foreign judgment filed with the Clerk shall have the same effect and be subject to the same procedures, defenses, or proceedings for reopening, vacating, or staying as a judgment of the Superior Court and may be enforced or satisfied in the same manner.

(Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Prior Codifications. — 1981 Ed., § 15-352.
Legislative history of Law 8-173. — For legislative history of D.C. Law 8-173, see Historical and Statutory Notes following § 15-351.

Editor’s notes. — Uniform Law: This section is based upon § 2 of the Uniform Enforcement of Foreign Judgments Act (1964).

CASE NOTES

In general.

Provision of the Uniform Enforcement of Foreign Judgments Act, as adopted by District of Columbia, requiring judgment creditor to file foreign judgment and any related affidavit providing identifying information about the judgment debtor with the District of Columbia Superior Court obligated California Franchise Tax Board (CFTB), as “judgment creditor,” not judgment debtor’s employer as third-party garnishee in District of Columbia, to register earnings withholding order issued by the CFTB. *McDonald v. American Red Cross*, 505 F.Supp.2d 143, 2007 U.S. Dist. LEXIS 64703 (2007).

Judgment debtor’s unverified motion was insufficient to vacate foreign default judgment, where motion was signed only by debtor’s counsel and not supported by affidavit or other evidence substantiating the claim that the debtor was not served in the underlying action, motion did not set forth meritorious defense to the debt underlying the judgment and, in light of the debtor’s failure to take any action until he was subpoenaed for an oral examination, no other relevant factors were present to justify vacating the judgment; motion merely invoked preference for resolving disputes on merits. *Von Plinsky v. Harvey*, 820 A.2d 549, 2003 D.C. App. LEXIS 157 (2003).

§ 15-353. Notice of filing.

(a) At the time of the filing of the foreign judgment, the judgment creditor or the judgment creditor’s lawyer shall make and file with the Clerk an affidavit that sets forth the names and last known addresses of the judgment debtor and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the Clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and address or name and post office address of the judgment creditor and the judgment creditor’s lawyer, if any, in the District. The judgment creditor may mail a notice of the filing of the foreign judgment to the judgment debtor and may file proof of mailing with the Clerk. Lack of mailing notice of filing by the Clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Prior Codifications. — 1981 Ed., § 15-353.
Legislative history of Law 8-173. — For legislative history of D.C. Law 8-173, see Historical and Statutory Notes following § 15-351.

Editor’s notes. — Uniform Law: This section is based upon § 3 of the Uniform Enforcement of Foreign Judgments Act (1964).

CASE NOTES

Construction and application.

Provision of the Uniform Enforcement of Foreign Judgments Act, as adopted by District of Columbia, requiring judgment creditor to file foreign judgment and any related affidavit providing identifying information about the judgment debtor with the District of Columbia Superior Court obligated California Franchise

Tax Board (CFTB), as "judgment creditor," not judgment debtor's employer as third-party garnishee in District of Columbia, to register earnings withholding order issued by the CFTB. *McDonald v. American Red Cross*, 505 F.Supp.2d 143, 2007 U.S. Dist. LEXIS 64703 (2007).

§ 15-354. Stay.

(a) Upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which the judgment is rendered, and if the judgment debtor shows the Superior Court that an appeal from the foreign judgment is pending or shall be taken or that a stay of execution has been granted, the Superior Court shall stay enforcement of the foreign judgment until:

- (1) The appeal is concluded;
- (2) The time for appeal expires; or
- (3) The stay of execution expires or is vacated.

(b) If the judgment debtor shows the Superior Court any ground upon which enforcement of a judgment of the Superior Court would be stayed, the Superior Court shall stay enforcement of the foreign judgment for an appropriate period upon requiring the same security for satisfaction of a judgment that is required in the District.

(Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Prior Codifications. — 1981 Ed., § 15-354.

Legislative history of Law 8-173. — For legislative history of D.C. Law 8-173, see Historical and Statutory Notes following § 15-351.

Editor's notes. — Uniform Law: This section is based upon § 4 of the Uniform Enforcement of Foreign Judgments Act (1964).

§ 15-355. Fees.

Any person filing a foreign judgment shall pay to the Clerk the fee established by the Superior Court. Fees for docketing, transcription, or other enforcement proceedings shall be as provided for judgments of the Superior Court.

(Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Prior Codifications. — 1981 Ed., § 15-355.

Legislative history of Law 8-173. — For legislative history of D.C. Law 8-173, see Historical and Statutory Notes following § 15-351.

Editor's notes. — Uniform Law: This section is based upon § 5 of the Uniform Enforcement of Foreign Judgments Act (1964).

§ 15-356. Optional procedure.

The right of a judgment creditor to bring an action to enforce a judgment in lieu of proceeding under this subchapter remains unimpaired.

(Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Prior Codifications. — 1981 Ed., § 15-356.
Legislative history of Law 8-173. — For legislative history of D.C. Law 8-173, see Historical and Statutory Notes following § 15-351.

Editor's notes. — Uniform Law: This section is based upon § 6 of the Uniform Enforcement of Foreign Judgments Act (1964).

§ 15-357. Uniformity of interpretation.

This subchapter shall be interpreted and construed to effectuate its general purpose to make uniform the law of jurisdictions that enact it.

(Oct. 2, 1990, D.C. Law 8-173, § 2(b), 37 DCR 5005.)

Prior Codifications. — 1981 Ed., § 15-357.
Legislative history of Law 8-173. — For legislative history of D.C. Law 8-173, see Historical and Statutory Notes following § 15-351.

Editor's notes. — Uniform Law: This section is based upon § 7 of the Uniform Enforcement of Foreign Judgments Act (1964).

Subchapter II-A. Uniform Foreign-Country Money Judgments.

§ 15-361. Short title.

This subchapter may be cited as the “Uniform Foreign-Country Money Judgments Recognition Act of 2011”.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Legislative history of Law 19-86. — Law 19-86, the “Uniform Foreign-Country Money Judgments Recognition Act of 2011”, was introduced in Council and assigned Bill No. 19-216, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 2011, and December 6, 2011, respectively. Signed by the

Mayor on December 21, 2011, it was assigned Act No. 19-246 and transmitted to both Houses of Congress for its review. D.C. Law 19-86 became effective on February 24, 2012.

Editor's notes. — Uniform Law: This section is based on § 1 of the Uniform Foreign-Country Money Judgments Recognition Act.

§ 15-362. Definitions.

For the purposes of this subchapter, the term:

(1) “Foreign country” means a government other than:

(A) The United States;

(B) The District of Columbia, a state, district, commonwealth, territory, or insular possession of the United States; or

(C) Any other government with regard to which the decision in the District of Columbia as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(2) “Foreign-country judgment” means a judgment of a court of a foreign country.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361.

Editor's notes. — Uniform Law: This sec-

tion is based on § 2 of the Uniform Foreign-Country Money Judgments Recognition Act.

§ 15-363. Applicability.

(a) Except as otherwise provided in subsection (b) of this section, this subchapter applies to a foreign-country judgment to the extent that the judgment:

- (1) Grants or denies recovery of a sum of money; and
- (2) Under the law of the foreign country where rendered, is:
 - (A) Final;
 - (B) Conclusive; and
 - (C) Enforceable.

(b) This subchapter does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is a:

- (1) Judgment for taxes;
- (2) Fine or other penalty; or
- (3) Judgment for:
 - (A) Divorce;
 - (B) Support or maintenance; or
 - (C) Other judgment rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this subchapter applies to the foreign-country judgment.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361.

Editor's notes. — Uniform Law: This sec-

tion is based on § 3 of the Uniform Foreign-Country Money Judgments Recognition Act.

§ 15-364. Standards for recognition of foreign-country judgment.

(a) Except as otherwise provided in subsections (b) and (c) of this section, a court of the District of Columbia shall recognize a foreign-country judgment to which this subchapter applies.

(b) A court of the District of Columbia may not recognize a foreign-country judgment if the:

- (1) Judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (2) Foreign court did not have personal jurisdiction over the defendant; or
- (3) Foreign court did not have jurisdiction over the subject matter.

(c) A court of the District of Columbia need not recognize a foreign-country judgment, if the:

- (1) Defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(2) Judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(3) Judgment or the cause of action on which the judgment is based is repugnant to the public policy of the District of Columbia or of the United States;

(4) Judgment conflicts with another final and conclusive judgment;

(5) Proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

(6) Foreign court, in the case of jurisdiction based only on personal service, was a seriously inconvenient forum for the trial of the action;

(7) Judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

(8) Specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) or (c) of this section exists.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361.

Editor's notes. — Uniform Law: This sec-

tion is based on § 4 of the Uniform Foreign-Country Money Judgments Recognition Act.

§ 15-365. Personal jurisdiction.

(a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if the:

(1) Defendant was served with process personally in the foreign country;

(2) Defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(3) Defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) Defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(5) Defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

(6) Defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of the District of Columbia may recognize bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361.
Editor's notes. — Uniform Law: This section is based on § 5 of the Uniform Foreign-Country Money Judgments Recognition Act.

§ 15-366. Procedure for recognition of foreign-country judgment.

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361.
Editor's notes. — Uniform Law: This section is based on § 6 of the Uniform Foreign-Country Money Judgments Recognition Act.

§ 15-367. Effect of recognition of foreign-country judgment.

If the court in a proceeding under § 15-366 finds that the foreign-country judgment is entitled to recognition under this subchapter, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in the District of Columbia would be conclusive; and

(2) Enforceable in the same manner and to the same extent as a judgment rendered in the District of Columbia.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361.
Editor's notes. — Uniform Law: This section is based on § 7 of the Uniform Foreign-Country Money Judgments Recognition Act.

§ 15-368. Stay of proceedings pending appeal of foreign-country judgment.

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the:

(1) Appeal is concluded;

(2) Time for appeal expires; or

(3) Appellant has had sufficient time to prosecute the appeal and has failed to do so.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361. **Editor's notes.** — Uniform Law: This section is based on § 8 of the Uniform Foreign-Country Money Judgments Recognition Act.

§ 15-369. Statute of limitations.

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the foreign-country judgment became effective in the foreign country.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361. **Editor's notes.** — Uniform Law: This section is based on § 9 of the Uniform Foreign-Country Money Judgments Recognition Act.

§ 15-370. Uniformity of interpretation.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361. **Editor's notes.** — Uniform Law: This section is based on § 10 of the Uniform Foreign-Country Money Judgments Recognition Act.

§ 15-371. Saving clause.

This subchapter does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this subchapter.

(Feb. 24, 2012, D.C. Law 19-86, § 2(b), 58 DCR 11186.)

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361. **Editor's notes.** — Uniform Law: This section is based on § 11 of the Uniform Foreign-Country Money Judgments Recognition Act.

Subchapter III. Uniform Foreign-Money Judgments.

§ 15-381. Definitions. [Repealed].

Repealed.

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Mar. 13, 2004, D.C. Law 15-105, § 100, 51 DCR 881; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Prior Codifications. — 1981 Ed., § 15-381.

Legislative history of Law 11-84. — Law 11-84, the “Uniform Foreign Money Judgments Recognition Act of 1995,” was introduced in Council and assigned Bill No. 11-229, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 28, 1995, it was assigned Act No. 11-163 and transmitted to both Houses of Congress for its review. D.C. Law 11-84 became effective on February 10, 1996.

Legislative history of Law 15-105. — Law 15-105, the “Technical Amendments Act of 2003,” was introduced in Council and assigned Bill No. 15-437, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively.

Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Legislative history of Law 19-86. — Law 19-86, the “Uniform Foreign-Country Money Judgments Recognition Act of 2011,” was introduced in Council and assigned Bill No. 19-216, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 2011, and December 6, 2011, respectively. Signed by the Mayor on December 21, 2011, it was assigned Act No. 19-246 and transmitted to both Houses of Congress for its review. D.C. Law 19-86 became effective on February 24, 2012.

Editor’s notes. — Uniform Law: This section is based upon § 1 of the Uniform Foreign Money-Judgments Recognition Act.

§ 15-382. Recognition and enforcement. [Repealed].

Repealed.

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Prior Codifications. — 1981 Ed., § 15-382.

Legislative history of Law 11-84. — For legislative history of D.C. Law 11-84, see Historical and Statutory Notes following § 15-381.

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361.

Editor’s notes. — Uniform Law: This section is based upon § 3 of the Uniform Foreign Money-Judgments Recognition Act.

§ 15-383. Grounds for nonrecognition. [Repealed].

Repealed.

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Prior Codifications. — 1981 Ed., § 15-383.

Legislative history of Law 11-84. — For legislative history of D.C. Law 11-84, see Historical and Statutory Notes following § 15-381.

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361.

Editor’s notes. — Uniform Law: This section is based upon § 4 of the Uniform Foreign Money-Judgments Recognition Act.

§ 15-384. Personal jurisdiction. [Repealed].

Repealed.

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Prior Codifications. — 1981 Ed., § 15-384.

Legislative history of Law 11-84. — For

legislative history of D.C. Law 11-84, see Historical and Statutory Notes following § 15-381.

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361.
Editor's notes. — Uniform Law: This section is based upon § 5 of the Uniform Foreign Money-Judgments Recognition Act.

§ 15-385. Stay in cases of appeal. [Repealed].

Repealed.

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Prior Codifications. — 1981 Ed., § 15-385.
Legislative history of Law 11-84. — For legislative history of D.C. Law 11-84, see Historical and Statutory Notes following § 15-381.
Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361.
Editor's notes. — Uniform Law: This section is based upon § 6 of the Uniform Foreign Money-Judgments Recognition Act.

§ 15-386. Savings clause. [Repealed].

Repealed.

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Mar. 13, 2004, D.C. Law 15-105, § 100, 51 DCR 881; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Prior Codifications. — 1981 Ed., § 15-386.
Legislative history of Law 11-84. — For legislative history of D.C. Law 11-84, see Historical and Statutory Notes following § 15-381.
Legislative history of Law 15-105. — For Law 15-105, see notes following § 15-381.
Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361.
Editor's notes. — Uniform Law: This section is based upon § 7 of the Uniform Foreign Money-Judgments Recognition Act.

§ 15-387. Applicability. [Repealed].

Repealed.

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Mar. 13, 2004, D.C. Law 15-105, § 100, 51 DCR 881; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Prior Codifications. — 1981 Ed., § 15-387.
Legislative history of Law 11-84. — For legislative history of D.C. Law 11-84, see Historical and Statutory Notes following § 15-381.
Legislative history of Law 15-105. — For Law 15-105, see notes following § 15-381.
Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361.
Editor's notes. — Uniform Law: This section is based upon § 2 of the Uniform Foreign Money-Judgments Recognition Act.

§ 15-388. Uniformity of application and construction. [Repealed].

Repealed.

(Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787; Mar. 13, 2004, D.C. Law 15-105, § 100, 51 DCR 881; Feb. 24, 2011, D.C. Law 19-86, § 2(c), 58 DCR 11186.)

Prior Codifications. — 1981 Ed., § 15-388.

Legislative history of Law 11-84. — For legislative history of D.C. Law 11-84, see Historical and Statutory Notes following § 15-381.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 15-381.

Legislative history of Law 19-86. — For history of Law 19-86, see notes under § 15-361.

Editor's notes. — Uniform Law: This section is based upon § 8 of the Uniform Foreign Money-Judgments Recognition Act.

CHAPTER 5. EXEMPTIONS AND TRIAL OF RIGHT TO SEIZED PROPERTY.

Subchapter I. Exemptions

Sec.

- 15-501. Exempt property of householder; property in transitu; debt for wages.
- 15-502. Mortgage or other instrument affecting exempt property.
- 15-503. Earnings and other income; wearing apparel and tools of certain persons.

Subchapter II. Trial of Right to Property Seized on Process of Superior Court

Sec.

- 15-521. Notice of claim or exemption; trial.
- 15-522. Docketing of claim; manner of trial.
- 15-523. Judgment.
- 15-524. Replevin against officer.

Subchapter I. Exemptions.

§ 15-501. Exempt property of householder; property in transitu; debt for wages.

(a) The following property of the head of a family or householder residing in the District of Columbia, or of a person who earns the major portion of his livelihood in the District of Columbia, being the head of a family or householder, regardless of his place of residence, is free and exempt from distraint, attachment, levy, or seizure and sale on execution or decree of any court in the District of Columbia:

(1) the debtor's interest, not to exceed \$2,575 in value, in one motor vehicle;

(2) the debtor's interest, not to exceed \$425 in value, in any particular item or \$8,625 in aggregate value in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal family or household use of the debtor or a dependent of the debtor;

(3) the debtor's aggregate interest in any property, not to exceed \$850 in value, plus up to \$8,075 of any unused amount of the exemption provided under paragraph (14) of this subsection;

(4) the debtor's aggregate interest, not to exceed \$1,625 in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor (this exemption shall also apply to merchants);

(5) any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract;

(6) professionally prescribed health aids for the debtor or a dependent of the debtor;

(7) the debtor's right to receive:

(A) a social security benefit;

(B) a veteran's benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; and

(E) a payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length

of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless:

(i) the plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(ii) the payment is on account of age or length of service; and

(iii) the plan or contract does not qualify under section 401(a) or 403(b) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.) ("1986 Code");

(8) all family pictures; and all the family library, not exceeding \$400 in value;

(9) notwithstanding subsection (b) of this section, money or other assets payable to a participant or beneficiary from, or an interest of a participant or beneficiary in, a retirement plan qualified under sections 401(a), 403(a), 403(b), 408, 408A, 414(d), or 414(e) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.) ("1986 Code"), or section 409 (as in effect prior to January 1984) of the Internal Revenue Code of 1954, approved August 6, 1954 (68A Stat. 3; 26 U.S. C. § 1 et seq.); provided, that:

(A) this paragraph shall not apply to:

(i) an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the 1986 Code;

(ii) a retirement plan, qualified under section 401(a) of the 1986 Code, as a creditor of an individual retirement account qualified under section 408 of the 1986 Code; or

(iii) any claims by, or any indebtedness, liability, or obligation owed to, the District of Columbia;

(B) if a contribution to a retirement plan described in this paragraph exceeds the amount deductible or, in the case of a contribution under section 408A of the 1986 Code, the maximum contribution allowed under the applicable provisions of the 1986 Code, the portion of the contribution that exceeds the amount deductible or, in the case of a contribution under section 408A of the 1986 Code, the maximum contribution allowed, and any accrued earnings on such portion, are not exempt;

(10) the interest of an alternate payee in a plan described in paragraph (9) of this subsection;

(11) the debtor's right to receive property that is traceable to:

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(12) provisions for 3 months support, whether provided or growing;

(13) the library, office furniture, and implements of a professional person or artist, not exceeding \$300 in value; and

(14) the debtor's aggregate interest in real property used as the residence of the debtor, or property that the debtor or a dependent of the debtor in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or dependent of the debtor, except nothing relative to these exemptions shall impair the following debt instruments on real property: deed of trust, mortgage, mechanic's lien, or tax lien.

(b) The exemptions provided for by subsection (a) of this section are valid when the property is in transit, the same as if at rest; but property named and exempted in this section is not exempt from attachment or execution for a debt due for the wages of servants, common laborers, or clerks, except the wearing apparel, beds, and bedding and household furniture for the debtor and family.

(c) For the purpose of this section, the person who is the principal provider for the family is the head thereof.

(Dec. 23, 1963, 77 Stat. 529, Pub. L. 88-241, § 1; June 24, 2000, D.C. Law 13-129, § 4, 47 DCR 2684; Apr. 27, 2001, D.C. Law 13-292, § 702, 48 DCR 2087; Mar. 14, 2007, D.C. Law 16-270, § 3(a), 54 DCR 851.)

Cross references. — Disability insurance benefits, exemption from execution, see § 31-4716.01.

Exemptions from executions generally, see § 15-101 et seq.

Forfeited recognizances and judgments, executions upon, see § 16-709.

Fraternal benefit association benefits, exemption from execution, see § 31-5711.

Group life policies and proceeds, exemption from execution, see § 31-4717.

Landlord's lien for rent, enforcement by execution, see §§ 42-3214 and 42-3215.

Public assistance, exemption from assignment and execution, see § 4-217.01.

Seizure by execution of goods located on leased premises, payment of rent due as prerequisite, see § 42-3216.

Teacher retirement annuities, exemption from assignment or execution, see § 38-2001.17.

Unemployment compensation benefits, exemption from execution, except for debts accrued for necessities, see § 51-118.

Wrongful death damages, exemption from appropriation for payment of debts and liabilities, see § 16-2703.

Section references. — This section is referred to in § 20-904.

Prior Codifications. — 1981 Ed., § 15-501. 1973 Ed., § 15-501.

Effect of amendments. — D.C. Law 13-129, in subsec. (a), in par. (7), deleted "and" from the end, in par. (8), substituted a semicolon for a period at the end, and added pars. (9) and (10).

Section 6 of D.C. Law 13-129 provided: "Section 4 of this act shall apply as of January 1, 2000."

D.C. Law 13-292 rewrote subsec. (a) which formerly read:

"(a) The following property of the head of a family or householder residing in the District of Columbia, or of a person who earns the major portion of his livelihood in the District of Columbia, being the head of a family or householder, regardless of his place of residence, is free and exempt from distraint, attachment, levy, or seizure and sale on execution or decree of any court in the District of Columbia:

"(1) all wearing apparel provided for all persons within the household, being members of the immediate family of the household, not exceeding \$300 per person in value;

"(2) all beds, bedding, household furniture and furnishings, sewing machines, radios, stoves, cooking utensils, not exceeding \$300 in value;

"(3) provisions for three months' support, whether provided or growing;

"(4) fuel for three months;

"(5) mechanics' tools and implements of the debtor's trade or business amounting to \$200 in value, with \$200 worth of stock or materials for carrying on the business or trade of the debtor;

"(6) the library, office furniture, and implements of a professional man or artist, not exceeding \$300 in value;

"(7) one horse or mule; one cart, wagon, or dray and harness, or one automobile or motor-controlled vehicle not exceeding \$500 in value if used principally by the debtor in his trade or business;

"(8) all family pictures; and all the family library, not exceeding \$400 in value.

"The exemption provided for by clause (5) of this subsection also applies to merchants;

"(9) notwithstanding subsection (b) of this section, money or other assets payable to a participant or beneficiary from, or an interest of a participant or beneficiary in, a retirement plan qualified under sections 401(a), 403(a), 403(b), 408, 408A, 414(d), or 414(e) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.) ('1986 Code'), or section 409 (as in effect prior to January 1984) of the Internal Revenue Code of 1954, approved August 6, 1954 (68A Stat. 3; 26 U.S.C. § 1 et seq.); provided, that:

"(A) this paragraph shall not apply to:

"(i) an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the 1986 Code;

"(ii) a retirement plan, qualified under section 401(a) of the 1986 Code, as a creditor of an individual retirement account qualified under section 408 of the 1986 Code; or

"(iii) any claims by, or any indebtedness, liability, or obligation owed to, the District of Columbia;

"(B) if a contribution to a retirement plan described in this paragraph exceeds the amount deductible or, in the case of a contribution under section 408A of the 1986 Code, the maximum contribution allowed under the applicable provisions of the 1986 Code, the portion of the contribution that exceeds the amount deductible or, in the case of a contribution under section 408A of the 1986 Code, the

maximum contribution allowed, and any accrued earnings on such portion, are not exempt; and

"(10) the interest of an alternate payee in a plan described in paragraph (9) of this subsection."

D.C. Law 16-270, in subsec. (a)(14), inserted "except nothing relative to these exemptions shall impair the following debt instruments on real property: deed of trust, mortgage, mechanic's lien, or tax lien".

Legislative history of Law 13-129. — Law 13-129, the "Fairness in Real Estate Transactions and Retirement Funds Protection Amendment Act of 2000," was introduced in Council and assigned Bill No. 13-267, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on February 1, 2000, and March 7, 2000, respectively. Signed by the Mayor on March 22, 2000, it was assigned Act No. 13-299 and transmitted to both Houses of Congress for its review. D.C. Law 13-129 became effective on June 24, 2000.

Legislative history of Law 13-292. — Law 13-292, the "Omnibus Trusts and Estates Amendment Act of 2000", was introduced in Council and assigned Bill No. 13-298, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 26, 2001, it was assigned Act No. 13-599 and transmitted to both Houses of Congress for its review. D.C. Law 13-292 became effective on April 27, 2001.

Legislative history of Law 16-270. — Law 16-270, the "Property Interest Amendment Act of 2006", was introduced in Council and assigned Bill No. 16-671, which was referred to Committee on Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-626 and transmitted to both Houses of Congress for its review. D.C. Law 16-270 became effective on March 14, 2007.

Editor's notes. — Section 4 of D.C. Law 16-270 provided: "Section 3 shall apply as of April 27, 2001."

CASE NOTES

ANALYSIS

Household goods.

In general.

Limitations.

Personal injury proceeds.

Household goods.

Chapter 7 debtors had to turn over to trustee

household goods which they had lumped together in claiming them as exempt under District of Columbia statute, which permitted exemption of "debtor's interest, not to exceed \$425 in value, in any particular item or \$8,625 in aggregate value" in household goods, but had valued at amount exceeding \$425, without claiming exemption amounts for individual

items, although debtors were entitled to recover exemptible amount out of proceeds of such property. In re Wade, 466 B.R. 20, 2012 Bankr. LEXIS 543 (2012).

In general.

When the space rented to another by the debtor is not a separate dwelling unit, such that the case is one of shared residency, and when the extent of such rentals does not change the character of the property into a commercial property, the property in its entirety should still be viewed as being used as the debtor's residence, for purposes of the District of Columbia homestead exemption. In re Springmann, 328 B.R. 251, 2005 Bankr. LEXIS 1453 (2005).

Debtor's incidental renting of two bedrooms in his three-bedroom single-family dwelling to university students, with the students sharing a common entrance and enjoying use of the common areas of the house on a shared residency basis, did not destroy the character of those rooms as part of real property used as debtor's residence, even if debtor treated the two bedrooms on his tax returns as income-generating rental activity, and, thus, debtor could claim the full value of his home as exempt under the District of Columbia's homestead exemption. In re Springmann, 328 B.R. 251, 2005 Bankr. LEXIS 1453 (2005).

Debtor's use of part of his basement as an office for his law practice did not render his interest in that part of the house non-exemptible under District of Columbia law. In re Springmann, 328 B.R. 251, 2005 Bankr. LEXIS 1453 (2005).

Phrase "aggregate interest in property," as used in District of Columbia statute exempting a debtor's aggregate interest in real property used as the residence of the debtor, means the bundle of rights the debtor has in property of an exempt character. In re Springmann, 328 B.R. 251, 2005 Bankr. LEXIS 1453 (2005).

Unlike the Bankruptcy Code's homestead exemption, which caps exemption of a debtor's aggregate interest in the debtor's residence at \$18,450.00, the District of Columbia's residence exemption is unlimited in amount. In re Springmann, 328 B.R. 251, 2005 Bankr. LEXIS 1453 (2005).

Where, as result of legislative error or omission, District of Columbia exemption statute purported to exempt debtor's right to receive property "traceable to _____ a payment _____ of the debtor," without otherwise specifying what types of payments statute was meant to cover, and where no legislative history existed to explain what legislature intended, bankruptcy court could not, under guise of statutory construction, fabricate an exemption that statute's plain language did not create; rather, statute was gibberish and could not be used by debtor to exempt anything. In re

Lewis, 305 B.R. 610, 2004 Bankr. LEXIS 252 (2004).

Phrase "unused amount," as used in District of Columbia "wildcard" exemption allowing debtor to exempt his or her aggregate interest in property, not to exceed \$850, plus up to \$8,075 of any "unused amount" of District of Columbia homestead exemption, had to be interpreted, in light of amendment to District of Columbia homestead statute that removed \$16,150 cap on homestead exemption and allowed exemption in unlimited amount, not as permitting all debtors who have exempted their equity in residence (in whatever amount) an automatic wildcard exemption of \$850 plus \$8,075, and not as though \$16,150 cap on District of Columbia homestead exemption cap were still in place; rather, court would interpret phrase to limit debtors who had \$8,075 or more of equity in their residence, and who had claimed that equity as exempt, to "wildcard" exemption in amount of \$850. In re McDonald, 279 B.R. 382, 2002 Bankr. LEXIS 678 (2002).

Phrase "unused amount," as used in District of Columbia "wildcard" exemption allowing debtor to exempt his or her aggregate interest in property, not to exceed \$850, plus up to \$8,075 of any "unused amount" of District of Columbia homestead exemption, could not be interpreted, in manner inconsistent with bankruptcy "wildcard" exemption on which it was based, to limit District of Columbia "wildcard" exemption to debtors with residence. In re McDonald, 279 B.R. 382, 2002 Bankr. LEXIS 678 (2002).

Order denying motion to quash an attachment is not final and hence not generally appealable, but District of Columbia Court of Appeals may hear appeals from interlocutory orders whereby possession of property is changed or affected. D.C. Code §§ 11-741(2), 15-501. Ludington v. Bogdanoff, 256 A.2d 921, 1969 D.C. App. LEXIS 324 (App. 1969).

Where possession of property was not affected by denial of intervenors' motion to quash attachment, appeal from order denying motion was premature and District of Columbia Court of Appeals was without jurisdiction of appeal. D.C. Code §§ 11-741(2), 15-501. Ludington v. Bogdanoff, 256 A.2d 921, 1969 D.C. App. LEXIS 324 (App. 1969).

Limitations.

Under District of Columbia statute allowing debtor to exempt debtor's aggregate interest in any property, not to exceed \$850 in value, plus up to \$8,075 of any unused amount of exemption for debtor's aggregate interest in real property used as debtor's residence, debtors' exemption was limited to \$850 for each debtor after debtors claimed as exempt entire amount of their equity in residence, as well as their non-equity interests in property, leaving no unused

portion of their exemption for their residential property. In re Wade, 466 B.R. 20, 2012 Bankr. LEXIS 543 (2012).

Personal injury proceeds.

Debtor who filed for Chapter 7 bankruptcy was not entitled to unlimited exemption for proceeds of personal injury settlement, under District of Columbia statute, exempting “debtor’s right to receive property that is traceable to” a payment “of the debtor,” since statute could not be read to exempt property traceable to payment “to” debtor as that would allow debtor to exempt all property traceable to payments made to her without any limitation as to

character of payments, and without specifying source of payment to be exemptible such exemption would swallow rule. *Howell-Robinson v. Albert*, 384 B.R. 19, 2008 U.S. Dist. LEXIS 21857 (2008), appeal dismissed by 2008 U.S. App. LEXIS 28204 (D.C. Cir. Oct. 22, 2008).

Under District of Columbia law, the debtor’s right to receive property that is traceable to a payment of the debtor does not create any cognizable bankruptcy exemption for personal injury proceeds. *Howell-Robinson v. Albert*, 384 B.R. 19, 2008 U.S. Dist. LEXIS 21857 (2008), appeal dismissed by 2008 U.S. App. LEXIS 28204 (D.C. Cir. Oct. 22, 2008).

§ 15-502. Mortgage or other instrument affecting exempt property.

(a) A mortgage, deed of trust, assignment for the benefit of creditors, or bill of sale upon exempted articles is not binding or valid unless it is signed by the spouse or domestic partner of a debtor who is living with his or her spouse or domestic partner. This section shall not apply to instruments related to property exempted in § 15-501(a)(14).

(b) For the purposes of this section, the term “domestic partner” shall have the same meaning as provided in § 32-701(3).

(Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1; Oct. 1, 1976, D.C. Law 1-87, § 11, 23 DCR 2544; Apr. 4, 2006, D.C. Law 16-79, § 3, 53 DCR 1035; Mar. 2, 2007, D.C. Law 16-191, § 131(a), 53 DCR 6794; Mar. 14, 2007, D.C. Law 16-270, § 3(b), 54 DCR 851.)

Prior Codifications. — 1981 Ed., § 15-502. 1973 Ed., § 15-502.

Effect of amendments. — D.C. Law 16-79 rewrote section, which had read as follows: “A mortgage, deed of trust, assignment for the benefit of creditors, or bill of sale upon exempted articles is not binding or valid unless it is signed by the spouse of a debtor who is married and living with his or her spouse.”

D.C. Law 16-191, in subsec. (a), validated a previously made technical correction.

D.C. Law 16-270, in subsec. (a), inserted “This section shall not apply to instruments related to property exempted in § 15-501(a)(14).”

Legislative history of Law 1-87. — Law 1-87, the “Anti-Sex Discriminatory Language Act,” was introduced in Council and assigned Bill No. 1-36, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on first and second readings on June 15, 1976 and June 29, 1976, respectively. Signed by the Mayor on July 27, 1976, it was assigned Act No. 1-143 and transmitted to both Houses of Congress for its review.

Legislative history of Law 16-79. — Law 16-79, the “Domestic Partnership Equality

Amendment Act of 2006”, was introduced in Council and assigned Bill No. 16-52 which was referred to the Committee on Judiciary. The Bill was adopted on first and second readings on December 6, 2005, and January 4, 2006, respectively. Signed by the Mayor on January 26, 2006, it was assigned Act No. 16-265 and transmitted to both Houses of Congress for its review. D.C. Law 16-79 became effective on April 4, 2006.

Legislative history of Law 16-191. — Law 16-191, the “Technical Amendments Act of 2006”, was introduced in Council and assigned Bill No. 16-760, which was referred to the Committee of the whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 31, 2006, it was assigned Act No. 16-475 and transmitted to both Houses of Congress for its review. D.C. Law 16-191 became effective on March 2, 2007.

Legislative history of Law 16-270. — For Law 16-270, see notes following § 15-501.

Editor’s notes. — Section 4 of D.C. Law 16-270 provided: “Section 3 shall apply as of April 27, 2001.”

§ 15-503. Earnings and other income; wearing apparel and tools of certain persons.

(a) The earnings (other than wages, as defined in subchapter III of Chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempted, not to exceed \$200 each month, of a person residing in the District of Columbia, or of a person who earns the major portions of his livelihood in the District of Columbia, regardless of place of residence, who provides the principal support of a family, for two months next preceding the issuing of any writ or process against him, from any court or officer of and in the District, are exempt from attachment, levy, seizure, or sale upon the process, and may not be seized, levied on, taken, reached, or sold by process or proceedings of any court, judge, or other officer of and in the District. Where spouses or domestic partners are living together, the aggregate of the earnings, insurance, annuities, and pension or retirement payments of the spouses or domestic partners is the amount which shall be determinative of the exemption of either in cases arising *ex contractu*.

(b) The earnings (other than wages, as defined in subchapter III of Chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempt, not to exceed \$60 each month for two months preceding the date of attachment of persons residing in the District of Columbia, or of persons who earn the major portions of their livelihood in the District of Columbia, regardless of place of residence, who do not provide for the support of a family, are entitled to like exemption from attachment, levy, seizure, or sale. All wearing apparel belonging to such persons, not exceeding \$300 in value, and mechanic's tools not exceeding \$200 in value, are also exempt.

(c) Notwithstanding any other provision of law, the wages (as defined in section 16-571 of the District of Columbia Official Code) of any person not residing in the District of Columbia who does not earn the major portion of such wages in the District of Columbia shall, in any case arising out of a contract or transaction entered into outside of the District of Columbia, be exempt from attachment, levy, or seizure, by any process or proceeding of any court, judge, or officer of the District of Columbia in the same amount and to the same extent as is provided by law of the State in which such person resides for persons residing therein. Whenever any claim is made for an exemption from attachment pursuant to this subsection, the burden shall be upon the plaintiff to prove that the contract or transaction involved in the case was entered into within the District of Columbia.

(d) A notice of claim of exemption, or motion to quash attachment or other process against exempt property or money, may be filed in the office of the clerk of the court either by the debtor, his spouse or domestic partner, or a garnishee. Thereupon, the court, after due notice, shall promptly act upon the notice, motion, or other claim of exemption.

(e) For the purposes of this section, the term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1; Oct. 21, 1970, 84 Stat. 1066, Pub. L. 91-475; Sept. 12, 2008, D.C. Law 17-231, § 19, 55 DCR 6758.)

Prior Codifications. — 1981 Ed., § 15-503. 1973 Ed., § 15-503.

Effect of amendments. — D.C. Law 17-231, in subsec. (a), substituted “spouses or domestic partners” for “husband and wife”; in subsec. (d), substituted “spouse or domestic partner” for “spouse”; and added subsec. (e).

Legislative history of Law 17-231. — Law 17-231, the “Omnibus Domestic Partnership Equality Amendment Act of 2008”, was intro-

duced in Council and assigned Bill No. 17-135, which was referred to the Committee on Public Safety and the Judiciary. The Bill was adopted on first and second readings on April 1, 2008, and May 6, 2008, respectively. Signed by the Mayor on June 6, 2008, it was assigned Act No. 17-403 and transmitted to both Houses of Congress for its review. D.C. Law 17-231 became effective on September 12, 2008.

CASE NOTES

In general.

While District of Columbia law exempted from attachment individual retirement account (IRA) of persons residing in District or those who earned major portion of their wages there,

it did not extend that protection to person living and working outside the District. D.C. Code 1981, § 15-503. *Johns v. Rozet*, 826 F. Supp. 565, 1993 U.S. Dist. LEXIS 10330 (1993).

Subchapter II. Trial of Right to Property Seized on Process of Superior Court.

§ 15-521. Notice of claim or exemption; trial.

When personal property taken on execution or other process issued by the Superior Court of the District of Columbia is claimed by a person other than the defendant therein, or is claimed by the defendant to be property exempt from execution, and the claimant gives written notice to the marshal of his claim, or the defendant gives notice, in writing, that the property is exempt, the marshal shall notify the plaintiff of the claim and return the notice to the court, and a trial of the right of property, or the question of exemption, shall be had before the court.

(Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(8)(A)(i).)

Section references. — This section is referred to in §§ 15-522 and 15-523.

Prior Codifications. — 1981 Ed., § 15-521. 1973 Ed., § 15-521.

§ 15-522. Docketing of claim; manner of trial.

The case made by the claim referred to in section 15-521 shall be entered on the docket as an action by the claimant or the defendant against the plaintiff and tried in the same manner as other cases before the Superior Court of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 530, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(8)(A)(i).)

Prior Codifications. — 1981 Ed., § 15-522.

1973 Ed., § 15-522.

§ 15-523. Judgment.

If the property referred to in section 15-521 appears to belong to the claimant

or to be exempt from the process, judgment shall be entered against the plaintiff for costs, and the property levied upon shall be released. If the property does not appear to belong to the claimant or to be exempt, judgment shall be entered against the claimant or the defendant as the case may be, for costs, including additional costs occasioned by the delay in the execution of the writ.

(Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 15-523. 1973 Ed., § 15-523.

§ 15-524. Replevin against officer.

This subchapter does not prevent a claimant other than the defendant from bringing an action of replevin against the officer levying upon the property claimed as described in this subchapter.

(Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 15-524. 1973 Ed., § 15-524.

CHAPTER 7. FEES AND COSTS.

Sec.

- 15-701. Compensation taxed as costs; attorneys' compensation from clients.
- 15-702. Attorney fees taxed as costs.
- 15-703. Security for costs by nonresidents.
- 15-704. Advance payment of costs and fees.
- 15-705. Exemption of District of Columbia and United States from fees, costs, and bonds.
- 15-706. [Repealed].
- 15-707. Probate fees.
- 15-708. Deposit for probate fees.
- 15-709. Fees and costs in Superior Court.
- 15-710. [Repealed].

Sec.

- 15-711. Deposit or security for costs in Superior Court.
- 15-712. Proceedings in forma pauperis.
- 15-713. Deposits for jury trials in Superior Court.
- 15-714. Witness fees for attendance in Superior Court.
- 15-715. Witness fees in prosecutions for cruelty to children or animals.
- 15-716. [Repealed].
- 15-717. Marriage license and related fees.
- 15-718. Juror fees.
- 15-719. Adoption court costs and fees.

§ 15-701. Compensation taxed as costs; attorneys' compensation from clients.

(a) Except as otherwise provided by law, only the compensation specified in this chapter may be taxed and allowed to attorneys, proctors, United States attorney, marshal, witnesses, and jurors.

(b) This chapter does not prohibit attorneys and proctors from charging or receiving from their clients other than the government such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage or may be agreed upon.

(Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1; June 19, 1986, 100 Stat. 633, Pub. L. 99-336, § 4(b)(1).)

Cross references. — Notaries public, fees, see §§ 1-1213 and 1-1214.

Prior Codifications. — 1981 Ed., § 15-701. 1973 Ed., § 15-701.

CASE NOTES

ANALYSIS

Bad faith exception.
Fee-shifting.
In general.
Review.

Bad faith exception.

Under District of Columbia law, even if lenders' agent could recover attorney fees and costs as a sanction for borrower's alleged litigation misconduct under the bad faith exception to the American Rule, such an award would not amount to compensable damages flowing from borrower's alleged pre-litigation fraud and misrepresentation; rather, such an award would represent sanctions. *Sloan v. Urban Title Servs.*, 770 F.Supp.2d 210, 2011 U.S. Dist. LEXIS 28131 (2011).

Attorneys were entitled to award of attorney fees not limited to expenses related to client's bad faith litigation tactics; client's bad faith litigation tactics commenced on date of its first

legal malpractice filing against attorneys, when it alleged in its complaint that had attorneys conducted competent and thorough investigation of employee's allegations that litigation documents were forged, attorneys would have discovered that such allegations were untrue, and bad faith allegation was enough to completely taint client's entire litigation strategy from date complaint was filed. *Breezevale Ltd. v. Dickinson*, 879 A.2d 957, 2005 D.C. App. LEXIS 412 (2005), writ of certiorari denied by 546 U.S. 1093, 126 S. Ct. 1053, 163 L. Ed. 2d 860, 2006 U.S. LEXIS 89 (2006).

District of Columbia applies the general principles of, and bad faith exception to, the "American rule" on attorney fees, under which a prevailing litigant ordinarily may not recover attorney fees from the defeated party when a case is concluded. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Bad faith exception to "American rule" for attorney fees does not allow trial judge to

sanction litigants for bringing colorable claims when they also happen to have other ulterior motives of questionable propriety. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Trial judge's recognition that both parties had arguably abused judicial system to ventilate personal grievances was proper support for decision to deny one party's request for attorney fees as sanction for opposing party's alleged bad faith; such balancing of equities was fully appropriate under bad faith exception to the "American rule" for attorney fees. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Sister's allegation in affidavit, submitted in action against her brothers for intentional infliction of emotional distress, that both brothers threatened her did not render affidavit a sham for purposes of determining whether brothers were entitled to attorney fees as sanction for sister's bad faith, even though evidence revealed that only one brother made the allegedly threatening statement; statement in affidavit was consistent with assertion that, by remaining silent, one brother adopted the other brother's words. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Generally speaking, the failure of proof at trial cannot, without more, be a basis for a finding of bad faith for purposes of exception to the "American rule" for attorney fees. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

In determining whether plaintiff's action was brought in bad faith, for purposes of exception to the "American rule" for attorney fees, trial court properly considered fact that plaintiff's claim survived summary judgment; such analysis was consistent with court's obligation to ascertain whether plaintiff's claim was colorable. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Party's bad faith in the maintenance of a colorable action, thus permitting award of attorney fees, may manifest itself through procedural "maneuvers" lacking justification or for an improper purpose, such as harassment or delay. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

In determining whether a claim is colorable for purposes of bad faith exception to the "American rule" for attorney fees, the question is whether a reasonable attorney could have concluded that facts supporting the claim might be established, not whether such facts actually had been established at the time the complaint was filed. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

A claim is "colorable," for purposes of bad faith exception to the "American rule" for attorney fees, when it has some legal and factual

support, considered in light of the reasonable beliefs of the individual making the claim. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

To ascertain whether a litigant has initiated an action in bad faith, for purposes of exception to the "American rule" for attorney fees, the court examines whether the claim is entirely without color and has been asserted wantonly, for purposes of harassment or delay, or for other improper reasons. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Bad faith, for purposes of exception to the "American rule" for attorney fees, may be found either in the initiation of a frivolous claim or in the manner in which a properly filed claim is subsequently litigated. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Party alleging bad faith for purposes of exception to the "American rule" for attorney fees bears a "heavy burden" of proof. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Judicial circumspection in awarding attorney fees under the bad faith exception to the "American rule" for attorney fees is necessary to safeguard a litigant's right of access to the courts. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

In vindicating its authority through bad faith exception to the "American rule" for attorney fees, the court must scrupulously avoid penalizing litigants for aggressively litigating their claims or discouraging good faith assertions of colorable claims and defenses. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Bad faith exception to the "American rule" for attorney fees contemplates the award or denial of attorney fees to punish abuses of the judicial process and deter future misconduct. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Assessment of attorney fees under bad faith exception to the "American rule" for attorney fees transcends the relations between litigants and reaches the court's inherent power to vindicate judicial authority without resort to the more drastic sanctions available for contempt. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Under bad faith exception to the "American rule" for attorney fees, party's bad faith conduct must be so egregious that fee shifting becomes warranted as a matter of equity. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Bad faith exception to the "American rule" for attorney fees allows a court to award attorney fees to the prevailing party if the defeated opponent acted in bad faith, vexatiously, wantonly, or for oppressive reasons. *Jung v. Jung*,

844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Fee-shifting.

Holders of notes and deeds of trust and trustees named in the deeds were not entitled to their incurred attorney fees pursuant to fee-shifting language in the notes and deeds, in unsuccessful action brought by estate of corporation's sole shareholder seeking to set aside foreclosure sales on deeds of trust on real estate that had been held in corporation's name; note provided for fee-shifting if the note was placed with an attorney for collection but estate's action was not a collection action, shareholder had only guaranteed such note and was not bound by the note's separate covenants and undertakings, and foreclosure sales had already occurred and holders and defendants were not seeking a judgment against the estate in the estate's action. *Estate of Raleigh v. Mitchell*, 947 A.2d 464, 2008 D.C. App. LEXIS 232 (2008).

In general.

Breach of contract entitled prevailing party to attorney fees without reduction to mirror time spent by non-prevailing party's attorneys in litigating summary judgment motions; nothing required a mirror-image test for time spent by attorneys, and given prevailing party's complete success on the merits, it was neither unreasonable nor an abuse of discretion for the trial judge to conclude that its attorneys had appropriately spent more time. *Nat'l Ass'n of Postmasters of the United States v. Washington*, 894 A.2d 471, 2006 D.C. App. LEXIS 139 (2006).

Fourteen-day limitations period governing motion for attorney fees as prevailing party began to run when judgment was entered in favor of personal representative of shooting victim's estate in action against District of Columbia and police officers for assault and battery, negligence per se, and excessive use of force under §§ 1983, absent motion for extension of time to file motion or any indication that trial court entered order sua sponte extending 14-day limit. *District of Columbia v. Jackson*, 878 A.2d 489, 2005 D.C. App. LEXIS 333 (2005).

Even if Attorney-Client Arbitration Board found that client had not signed contingent-fee agreement for law firm's representation of client in client's personal injury action, Board could award law firm an attorney fee based on lodestar method of determining fees or based on quantum meruit theory. *Schwartz v. Chow*, 867 A.2d 230, 2005 D.C. App. LEXIS 22 (2005).

Client's trial counsel and appellate counsel for personal injury action and for seven other matters did not show it was probable that Attorney-Client Arbitration Board manifestly

disregarded the law or exceeded its powers when it made lump-sum award of attorney fees to counsel, and thus, court would not attempt to analyze the reasoning process of Board, which made lump-sum award without explanation of grounds for decision; while counsel believed that Board's rationale must have been that professional conduct rule, enacted after client entered into contingent-fee agreement with trial counsel, required written notice to client of fee-sharing agreement between trial and appellate counsel, and while counsel believed retroactive application of rule disregarded the law and exceeded Board's powers, client presented plausible alternative rationales for Board's lump-sum award, i.e., that fees were awarded under lodestar method or under quantum meruit theory, and court would not speculate regarding Board's rationale. *Schwartz v. Chow*, 867 A.2d 230, 2005 D.C. App. LEXIS 22 (2005).

Trade name owner forfeited its challenge to attorney fees awarded to enforce consent decree against competitor, where owner failed to contest in the trial court the special masters' decision to recommend \$34,500 cut in request and stated that it was generally satisfied with the special masters' recommendation. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

The trial court had the discretion to award attorney fees reasonably incurred by trade name owner to prosecute competitor for civil contempt of consent decree even absent a finding that competitor's violation of court order was willful and even absent a specific attorney's fee provision in the decree. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

The determination of the reasonableness of the amount of an attorneys' fee award is left to the sound discretion of the trial court. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

In most situations, a reasonable attorney fee is computed by first determining the so-called lodestar—the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate—and then, in exceptional cases, making upward or downward adjustments as appropriate. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

Trade name owner's failure to succeed completely in its claims against competitor for violating consent decree and to win every legal ruling concerning laches defense and scope of decree did not require reduction in attorney fee award; the case was an exceptionally complex one that mandated an extensive investigation of the competitor's entire course of business conduct over many years in order to establish that noncompliance with the consent decree was truly contemptuous, the full scope of the

noncompliance needed to be explored and defined, and the owner prevailed on the main point. *Fed. Mktg. Co. v. Va. Impression Prods. Co.*, 823 A.2d 513, 2003 D.C. App. LEXIS 288 (2003).

A trial court has an inherent sanctioning power that transcends specific statutes or rules and extends to the full range of litigation abuses. *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Courts are to exercise their inherent powers to sanction by awarding attorneys fees with restraint and discretion. *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

A court may award attorney fees, as sanctions, against a party who has acted in bad faith, vexatiously, wantonly, or for oppressive reasons in connection with the litigation. *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The bad faith exception to the general rule that each party pays its own attorney fees is intended to punish those who have abused the judicial process and to deter those who would do so in the future. *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Courts may award attorney fees as a sanction against a party who exhibits a willful disobedience of a court order. *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

In awarding attorney fees as a sanction, a party is not to be penalized by the court for maintaining an aggressive litigation posture, nor are good faith assertions of colorable claims or defenses to be discouraged. *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

In attempting to deter bad faith litigation through attorney fee awards, the court must scrupulously avoid penalizing a party for a legitimate exercise of the right of access to the courts. *Valentine v. Elliott (In re Estate of*

Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The standards of bad faith, as basis for imposing attorney fees as sanction, are necessarily stringent. *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The American Rule, which requires each party to bear its own attorney fees, serves to ensure that no individual will be deterred from bringing legal action for fear of losing and being forced to pay substantial legal fees for the other side. *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The awarding of attorney fees for bad faith litigation is proper only under extraordinary circumstances or when dominating reasons of fairness so demand. *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Even if will contest brought by decedent's alleged common law wife could be construed as violating court order admitting will into probate, alleged wife had at least colorable claim, and thus, imposition of attorney fees as sanction for bad faith conduct was not warranted; initial claims were based on some facts that tended to support her claim of forged will, and her later pleadings argued for modification of existing law by either applying discovery rule to statutory time limitations for challenging a will or using fraud statute of limitations in the probate proceeding. *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

A claim is colorable, so that imposition of sanctions for bad faith conduct is not warranted, when it has some legal and factual support. *Valentine v. Elliott (In re Estate of Delaney)*, 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

The question, when determining whether a claim was brought in bad faith so that sanctions are warranted, is whether a reasonable attorney could have concluded that facts supporting the claim might be established, not whether such facts actually had been established. *Valentine v. Elliott (In re Estate of*

Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Sanctions for bad faith conduct should not be imposed unless it is patently clear that a claim had absolutely no chance of success prior to filing. *Valentine v. Elliott* (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Conduct of successor counsel for decedent's alleged common law wife, in relying on information from alleged wife when asserting her probate claims as a common law wife, after predecessor counsel had failed to order transcription of deposition in which alleged wife had given testimony undercutting her claim of common law wife status, did not warrant imposition of sanctions for bad faith conduct. *Valentine v. Elliott* (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

It is not sanctionable behavior, as basis for award of attorney fees to opposing party, for an attorney to file a complaint based solely on the oral representation of his client without the benefit of independent corroboration. *Valentine v. Elliott* (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

Conduct of decedent's alleged common law spouse, in interfering with witness in probate proceeding by discussing with witness the witness' testimony, did not warrant imposition of sanctions; the witness, who was chief executive officer (CEO) of small credit union, was a responsible adult capable of obeying probate court order not to discuss her testimony with anyone, and such order was directed at the witness, not at the alleged wife. *Valentine v. Elliott* (In re Estate of Delaney), 819 A.2d 968, 2003 D.C. App. LEXIS 148 (2003), writ of certiorari denied by 540 U.S. 1109, 124 S. Ct. 1075, 157 L. Ed. 2d 896, 2004 U.S. LEXIS 114, 72 U.S.L.W. 3447 (2004).

A finding of bad faith in prosecuting claims, as basis for award of attorney fees to opposing party, must be supported by clear and convincing evidence. *Fischer v. Estate of Flax*, 816 A.2d 1, 2003 D.C. App. LEXIS 19 (2003), remanded by 935 A.2d 362, 2007 D.C. App. LEXIS 659 (D.C. 2007), remanded by 935 A.2d 1091, 2007 D.C. App. LEXIS 669 (D.C. 2007).

The award of attorney fees as a deterrent to bad faith litigation, as an exception to the American Rule under which each party pays its own attorney fees, operates only in extraordi-

nary cases. *Fischer v. Estate of Flax*, 816 A.2d 1, 2003 D.C. App. LEXIS 19 (2003), remanded by 935 A.2d 362, 2007 D.C. App. LEXIS 659 (D.C. 2007), remanded by 935 A.2d 1091, 2007 D.C. App. LEXIS 669 (D.C. 2007).

Evidence established brewery owner's bad faith in prosecuting claim for tortious interference with prospective economic advantage against defendant finder of securities underwriter for brewery owner's financing, and thus, defendant finder was entitled to attorney fee award for bad faith litigation; owner was involved in creating backdated or false letters to support owner's assertion that defendant finder had scuttled the financing because another finder had contacted underwriter first and defendant finder therefore knew he would not receive a finder's fee. *Fischer v. Estate of Flax*, 816 A.2d 1, 2003 D.C. App. LEXIS 19 (2003), remanded by 935 A.2d 362, 2007 D.C. App. LEXIS 659 (D.C. 2007), remanded by 935 A.2d 1091, 2007 D.C. App. LEXIS 669 (D.C. 2007).

A claim is "colorable," so that prosecution of the claim does not constitute bad faith which would warrant an attorney fee award to the opposing party, where the claim has some legal and factual support, considered in light of the reasonable beliefs of the individual making the claim. *Fischer v. Estate of Flax*, 816 A.2d 1, 2003 D.C. App. LEXIS 19 (2003), remanded by 935 A.2d 362, 2007 D.C. App. LEXIS 659 (D.C. 2007), remanded by 935 A.2d 1091, 2007 D.C. App. LEXIS 669 (D.C. 2007).

Attorney fees and costs payable by plaintiffs following voluntary dismissal without prejudice are limited to the amount expended for work that cannot be applied to the subsequent lawsuit concerning the same claims, and this amount must be supported by evidence in the record. *Thoubboron v. Ford Motor Co.*, 809 A.2d 1204, 2002 D.C. App. LEXIS 602 (2002).

Reasonableness of defendant's attorney fees and costs as determined by Court of Appeals in prior appeal could not be raised in subsequent appeal. *Thoubboron v. Ford Motor Co.*, 809 A.2d 1204, 2002 D.C. App. LEXIS 602 (2002).

It is for the trial court to exercise its discretion in the first instance, applying the proper factors, to determine whether party's delay in filing motion for attorney fees was due to excusable neglect. *Breiner v. Daka, Inc.*, 806 A.2d 180, 2002 D.C. App. LEXIS 508 (2002).

Awarding prevailing employer \$1,500 in costs for former employee's defamation claim and \$7,342.72 in costs for former employee's discrimination claim was not abuse of discretion, given that amount requested by employer for such claims was \$7,282.72 and \$22,226.23, respectively. *Wallace v. Skadden, Arps, Slate, Meagher & Flom LLP*, 799 A.2d 381, 2002 D.C. App. LEXIS 296 (2002).

Decision to award costs to prevailing party is discretionary one. *Wallace v. Skadden, Arps,*

Slate, Meagher & Flom LLP, 799 A.2d 381, 2002 D.C. App. LEXIS 296 (2002).

Former husband was not entitled to award of attorney fees, pursuant to separation and property settlement agreement providing for fee-shifting in favor of a party who successfully brought an action to enforce or implement the terms of the agreement, though trial court denied former wife's motion to modify a child custody order and former husband had brought a counterclaim alleging former wife had not shown grounds for modification and that former wife had interfered with former husband's custodial rights; the trial court did not find that former wife had interfered with former husband's custodial rights, the relief the trial court ordered was no different than if former husband had successfully defended against custody modification but had filed no counterclaim, the fee-shifting provision did not apply to defense of claims, and former husband's counterclaim could not be construed as an action to enforce or implement the agreement. *Fritz v. Grise*, 797 A.2d 710, 2002 D.C. App. LEXIS 101 (2002).

Even assuming that a trial court, in a child custody matter, may override a contractual attorney fee provision when the interests of a child dictate, former husband was not entitled to attorney fees for successfully defending against former wife's motion to modify child custody, where former husband made no showing that his ability to care for the children was impaired by the cost of defending against former wife's motion. *Fritz v. Grise*, 797 A.2d 710, 2002 D.C. App. LEXIS 101 (2002).

Awarding \$750 in attorney fees to father's counsel based upon emergency motion for continuance filed by mother's counsel was abuse of discretion, where mother's counsel was not provided with meaningful opportunity to argue against imposition of any such sanctions against her and trial court failed to make finding that mother's counsel acted in bad faith, vexatiously, wantonly, or for oppressive reasons in seeking continuance at almost last minute. *Delacruz v. Harris*, 780 A.2d 262, 2001 D.C. App. LEXIS 195 (2001).

In absence of statutory or rule authority, attorney fees generally are not allowed as element of damages, costs, or otherwise; there are few limited exceptions to this general rule, including that court in its discretion may award attorney fees to prevailing party if conduct of nonprevailing party is willfully fraudulent, in bad faith, vexatious, wanton, or oppressive. *Delacruz v. Harris*, 780 A.2d 262, 2001 D.C. App. LEXIS 195 (2001).

Attorney fees should not be assessed lightly or without fair notice and opportunity for hearing on record; attorney is entitled at least to meaningful opportunity to argue, either in open court or on paper, against imposition of any such sanctions against him. *Delacruz v. Harris*,

780 A.2d 262, 2001 D.C. App. LEXIS 195 (2001).

Under the "American Rule," litigants, win or lose, bear their own fees. In *re Estate of King*, 769 A.2d 771, 2001 D.C. App. LEXIS 70 (2001).

The bad faith exception to the "American Rule" applies where a party withholds action to which the opposing party is patently entitled because of a fiduciary relationship, and does so in bad faith, vexatiously, wantonly, or for oppressive reasons. In *re Estate of King*, 769 A.2d 771, 2001 D.C. App. LEXIS 70 (2001).

A well-recognized exception to "American Rule," that each party bear his own expenses of litigation, allows a party wrongfully involved in litigation with a third party to recover from wrongdoer expenses of such litigation, including attorney fees. *Safeway Stores, Inc. v. Chamberlain Protective Services, Inc.*, 451 A.2d 66, 1982 D.C. App. LEXIS 441 (1982).

In order for a party to come within exception to the "American Rule" such as to be permitted to recover expenses of litigation, plaintiff must have incurred attorney fees in prosecution or defense of a prior action, the litigation ordinarily must have been with a third party and not with defendant in the present action, and plaintiff must have become involved in such litigation because of some tortious act of defendant. *Safeway Stores, Inc. v. Chamberlain Protective Services, Inc.*, 451 A.2d 66, 1982 D.C. App. LEXIS 441 (1982).

Joint tort-feasor, who defended not only claims concerning tortious conduct of an employee of the other joint tort-feasor but also allegations of its own separate and independent negligence, could not recover attorney fees and expenses from the other joint tort-feasor under "wrongful involvement in litigation" exception to rule against recovery of attorney fees since both joint tort-feasors were passive or secondary tort-feasors, primary or active tort-feasor being the other tort-feasor's employee. *Safeway Stores, Inc. v. Chamberlain Protective Services, Inc.*, 451 A.2d 66, 1982 D.C. App. LEXIS 441 (1982).

Under "wrongful involvement in litigation" exception to rule against recovery of attorney fees, a party is considered to have committed a wrongful act whether he did it personally or through an agent for whom he is responsible. *Safeway Stores, Inc. v. Chamberlain Protective Services, Inc.*, 451 A.2d 66, 1982 D.C. App. LEXIS 441 (1982).

Award of \$10,863.17 punitive damages, including \$5,328 for attorneys' fees and \$535.17 for out-of-pocket expenses of lawsuit was not abuse of discretion, where landlord had maliciously locked out tenant whose rent was fully paid in effort to intimidate other tenants and there had been seven years litigation. *Town Center Management Corp. v. Chavez*, 373 A.2d 238, 1977 D.C. App. LEXIS 469 (1977).

Wife's counsel was entitled to an award of \$150 for services performed on appeal from judgment denying wife a limited divorce and separate maintenance. *Hannon v. Hannon*, 220 A.2d 94, 1966 D.C. App. LEXIS 184 (App. 1966).

Review.

Attorney fee award of \$178,100 for hotel was not an abuse of discretion in suit against customer for canceling contracts for conferences, even though the award included time spent on suit in Illinois; the customer claimed that Illinois was inconvenient forum and filed suit in the District of Columbia. *Nat'l Ass'n of Postmasters of the United States v. Washington*, 894 A.2d 471, 2006 D.C. App. LEXIS 139 (2006).

Rule that 14-day limitations period for filing motion for attorney fees after entry of judgment began again after entry of new judgment following reversal or remand by the Court of Appeals did not apply to motion for fees filed after Court of Appeals affirmed judgment in favor of shooting victim's estate, in action brought against District of Columbia and police officers for assault and battery, negligence per se, and excessive use of force. *District of Columbia v. Jackson*, 878 A.2d 489, 2005 D.C. App. LEXIS 333 (2005).

Appellate review of trial court's ultimate decision to deny attorney fees as sanction for bad faith is confined to a determination of whether the trial court failed to consider a relevant factor, whether it relied upon an improper factor, and whether the reasons given reasonably support the conclusion. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

Appellate review of trial court's grant or denial of attorney fees as sanction for bad faith is limited; the predicate finding of bad faith vel non is a factual one which is to be reviewed

under the clearly erroneous standard, and the decision to award fees will be reversed only for abuse of discretion. *Jung v. Jung*, 844 A.2d 1099, 2004 D.C. App. LEXIS 69 (2004).

De novo standard of review applied to the trial court's denial of motion for attorney fees and costs, as the appeal presented a question of law. *Pride Transp., Inc. v. Northeastern Pa. Shippers Coop. Ass'n*, 832 A.2d 163, 2003 D.C. App. LEXIS 563 (2003).

A decision to award costs is committed to the trial court's discretion, and, upon review, it is not for the appellate court to substitute its discretion for that of the trial court. *Pride Transp., Inc. v. Northeastern Pa. Shippers Coop. Ass'n*, 832 A.2d 163, 2003 D.C. App. LEXIS 563 (2003).

Judgment creditor's unsuccessful appeal against garnishee was not frivolous and did not entitle garnishee to attorney fees, particularly in light of the fact that the trial court did not explain the reasons for its disposition of the motion before it. *Pride Transp., Inc. v. Northeastern Pa. Shippers Coop. Ass'n*, 832 A.2d 163, 2003 D.C. App. LEXIS 563 (2003).

The predicate finding of bad faith in prosecuting claims, as basis for award of attorney fees to opposing party, is a factual one which the appellate court reviews under the clearly erroneous standard. *Fischer v. Estate of Flax*, 816 A.2d 1, 2003 D.C. App. LEXIS 19 (2003), remanded by 935 A.2d 362, 2007 D.C. App. LEXIS 659 (D.C. 2007), remanded by 935 A.2d 1091, 2007 D.C. App. LEXIS 669 (D.C. 2007).

The decision to award attorney fees to a party, based on opposing party's bad faith in prosecuting claims, will be reversed only for abuse of discretion. *Fischer v. Estate of Flax*, 816 A.2d 1, 2003 D.C. App. LEXIS 19 (2003), remanded by 935 A.2d 362, 2007 D.C. App. LEXIS 659 (D.C. 2007), remanded by 935 A.2d 1091, 2007 D.C. App. LEXIS 669 (D.C. 2007).

§ 15-702. Attorney fees taxed as costs.

An attorney for the District of Columbia may not retain attorney fees taxed as costs in litigation in which the District of Columbia is a party.

(Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1; June 19, 1986, 100 Stat. 633, Pub. L. 99-336, § 4(b)(2).)

Section references. — This section is referred to in § 15-709.

Prior Codifications. — 1981 Ed., § 15-702. 1973 Ed., § 15-702.

§ 15-703. Security for costs by nonresidents.

(a) The defendant in a suit instituted by a nonresident of the District of Columbia, or by one who becomes a nonresident after the suit is commenced, upon notice served on the plaintiff or his attorney after service of process on the defendant, may require the plaintiff to give security for costs and charges that

may be adjudged against him on the final disposition of the cause. This right of the defendant does not entitle him to delay in pleading, and his pleading before the giving of the security is not a waiver of his right to require security for costs. In case of noncompliance with these requirements, within a time fixed by the court, judgment of nonsuit or dismissal shall be entered. The security required may be by an undertaking, with security, to be approved by the court, or by a deposit of money in an amount fixed by the court.

(b) A nonresident, at the commencement of his suit, may deposit with the clerk such sum as the court deems sufficient as security for all costs that may accrue in the cause, which deposit may afterwards be increased on application, in the discretion of the court.

(Dec. 23, 1963, 77 Stat. 531, Pub. L. 88-241, § 1; June 19, 1986, 100 Stat. 633, Pub. L. 99-336, § 4(b)(3).)

Cross references. — Fees and costs in Small Claims and Conciliation Branch of Superior Court, see §§ 16-3903 and 16-3909.

Fees and costs in Superior Court, see § 15-709.

Section references. — This section is referred to in § 15-711.

Prior Codifications. — 1981 Ed., § 15-703. 1973 Ed., § 15-703.

CASE NOTES

In general.

Trial court's interlocutory order in nonresident attorney's breach of contract action against purported partner, requiring attorney to deposit additional \$5000 into court registry as security for costs of accounting, was a discretionary ruling and, thus, did not warrant

immediate review under the collateral order doctrine; statute authorizing trial court to increase security upon application placed decision as to whether security should be increased within discretion of the trial judge. *Landise v. Mauro*, 927 A.2d 1026, 2007 D.C. App. LEXIS 321 (2007).

§ 15-704. Advance payment of costs and fees.

Costs and fees for services rendered by the Register of Wills and chargeable to others than the United States or the District of Columbia are payable in advance and shall be collected pursuant to such rules and regulations, not incompatible with law, as are prescribed by the court.

(Dec. 23, 1963, 77 Stat. 532, Pub. L. 88-241, § 1; June 19, 1986, 100 Stat. 633, Pub. L. 99-336, § 4(b)(4).)

Cross references. — Costs in suits against Board of Education, see §§ 1-204.95, 38-101.

Prior Codifications. — 1981 Ed., § 15-704. 1973 Ed., § 15-704.

§ 15-705. Exemption of District of Columbia and United States from fees, costs, and bonds.

(a) The District of Columbia or any officer thereof acting therefor may not be required to pay court costs or fees in any court in and for the District of Columbia.

(b) The District of Columbia may not be required to pay fees to the clerk of the United States Court of Appeals for the District of Columbia, or to the

marshal of the District, and is entitled to the services of the marshal in the service of all civil process.

(c) The United States and the District of Columbia may not be required to pay fees and costs for services rendered by the clerk of the United States District Court for the District of Columbia and the Register of Wills.

(d) Neither the United States nor the District of Columbia, nor any officer of either acting in his official capacity, may be required to give bond or enter into undertaking to perfect an appeal or to obtain an injunction or other writ, process, or order in or of any court in the District of Columbia for which a bond or undertaking is required by law or rule of court.

(Dec. 23, 1963, 77 Stat. 532, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 15-705. 1973 Ed., § 15-705.

CASE NOTES

In general.

Length of delay in implementing retroactive payment order of commissioner of Department of Human Resources justified an assessment of costs in form of a \$25 filing fee against administrative officers in their official capacity once

petition in nature of mandamus to compel agency action was dismissed as moot after officers tardily performed requested action. D.C. Code § 11-743; 18 U.S.C. § 1920. *Dillard v. Yeldell*, 334 A.2d 578, 1975 D.C. App. LEXIS 339 (1975).

§ 15-706. Clerk's fees in United States District Court for the District of Columbia. [Repealed].

Repealed.

(June 19, 1986, 100 Stat. 633, Pub. L. 99-336, § 4(b)(5).)

Prior Codifications. — 1981 Ed., § 15-706.

§ 15-707. Probate fees.

(a) Except as provided in subsection (b), the Register of Wills may demand and receive in advance for services performed by him such fees as shall be set by the court having jurisdiction over probate matters in the District of Columbia.

(b) Where the estate does not exceed \$500 in value the Register of Wills shall receive no fees, and where the estate does not exceed \$2,500 in value the fees may not exceed \$15.

(Dec. 23, 1963, 77 Stat. 534, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(10)(A); Aug. 11, 1971, 85 Stat. 313, Pub. L. 92-88, § 3.)

Prior Codifications. — 1981 Ed., § 15-707. 1973 Ed., § 15-707.

§ 15-708. Deposit for probate fees.

For proceedings in probate deposits and fees shall be paid to the Register of Wills.

Upon the presentation for filing of a petition or a caveat to a will, he may require a deposit for his fees to be charged for the proceedings under the petition or caveat. Upon the deposit becoming exhausted in the liquidation of his fees so charged, he may require a further deposit from the original petitioner or caveator. The deposits may not be required in excess of fifteen dollars at any one time.

(Dec. 23, 1963, 77 Stat. 535, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(11)(A).)

Prior Codifications. — 1981 Ed., § 15-708. 1973 Ed., § 15-708.

§ 15-709. Fees and costs in Superior Court.

(a) The Superior Court of the District of Columbia may prescribe fees and costs, including the fee to be paid for a jury trial.

(b) Fees for services by the United States marshals for processes issued by the Superior Court shall be prescribed by rules of that court.

(Dec. 23, 1963, 77 Stat. 535, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(12)(A); June 19, 1986, 100 Stat. 633, Pub. L. 99-336, § 4(b)(6).)

Section references. — This section is referred to in §§ 15-713 and 16-703.

Prior Codifications. — 1981 Ed., § 15-709. 1973 Ed., § 15-709.

CASE NOTES

In general.

Where, by motion for transcript, public funds may be expended for such purpose, copy of motion for transcript should be served on United States attorney. 18 U.S.C. § 1915(e);

D.C. Code §§ 11-935, 13-101, 15-709; Fed. Rules App. Proc. rule 10(b), 24, 18 U.S.C.; General Sessions Court Rules, § 1, rule 54(f). McKelton v. Bruno, 264 A.2d 493, 1970 D.C. App. LEXIS 275 (App. 1970).

§ 15-710. Fees and costs in Domestic Relations Branch of Court of General Sessions. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(13).)

Prior Codifications. — 1981 Ed., § 15-710.

§ 15-711. Deposit or security for costs in Superior Court.

Nonresidents of the District of Columbia may commence suits in the Superior Court of the District of Columbia without first giving security for costs, but upon motion may be required to give security pursuant to section 15-703.

(Dec. 23, 1963, 77 Stat. 535, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(14).)

Prior Codifications. — 1981 Ed., § 15-711. 1973 Ed., § 15-711.

§ 15-712. Proceedings in forma pauperis.

(a) Any District of Columbia court may authorize the commencement, prosecution or defense of any noncriminal suit, action or proceeding, or appeal therein, without prepayment of fees and costs or security therefor, including the fees for transcripts on appeal, by a person who is unable to pay such costs or give security therefor without substantial hardship to himself or herself or his or her family, as established by affidavit or other proof satisfactory to the court.

(b) Any person who makes an affidavit as provided in subsection (a) of this section and states therein that he or she receives public assistance under the District of Columbia Temporary Assistance for Needy Families, Program on Work, Employment, and Responsibility or General Assistance for Children programs, or receives assistance under title XVI of the Social Security Act (Supplemental Security Income) (76 Stat. 197) shall be presumed eligible to proceed without prepayment of fees and costs or security therefor.

(Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(14); Apr. 7, 1977, D.C. Law 1-107, title II, § 202, 23 DCR 8737; Mar. 20, 1998, D.C. Law 12-60, § 703, 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 8, 46 DCR 905; Apr. 20, 1999, D.C. Law 12-264, § 24, 46 DCR 2118.)

Prior Codifications. — 1981 Ed., § 15-712. 1973 Ed., § 15-712.

Temporary Amendment of Section. — Section 4 of D.C. Law 12-21 substituted “General Assistance for Children Programs” for “General Public Assistance Programs” in (b).

Section 8(b) of D.C. Law 12-21 provided that the act shall expire on the 225th day of its having taken effect.

D.C. Law 12-59, in (b), substituted “General Assistance for Children” for “General Public Assistance.”

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Section 8 of D.C. Law 12-230 substituted “Temporary Assistance for Needy Families, Program on Work, Employment, and Responsibility” for “Aid to Families with Dependent Children” in (b).

Section 18(b) of D.C. Law 12-230 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary amendment of section, see § 4 of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

Section 7 of D.C. Act 12-72 provided for the application of the act.

For temporary amendment of section, see § 703 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196); and § 703 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provided for the application of the act.

For temporary amendment of section, see § 8 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 8 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 8 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 8 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492).

Section 17 of D.C. Act 12-552 provided for the retroactive application of the act.

Section 18 of D.C. Act 13-19 provided for the retroactive application of the act.

Legislative history of Law 1-107. — Law 1-107, the “District of Columbia Marriage and Divorce Act,” was introduced in Council and

assigned Bill No. 1-89, which was referred to the Committee on the Judiciary and Criminal Law. The Bill was adopted on amended first readings on July 27, 1976 and September 15, 1976, and second readings on November 22, 1976 and December 7, 1976. Signed by the Mayor on January 4, 1977, it was assigned Act No. 1-193 and transmitted to both Houses of Congress for its review.

Legislative history of Law 12-21. — Law 12-21, the “General Public Assistance Program Termination Temporary Amendment Act of 1997,” was introduced in Council and assigned Bill No. 12-169. The Bill was adopted on first and second readings on May 6, 1997, and June 3, 1997, respectively. Signed by the Mayor on June 18, 1997, it was assigned Act No. 12-98 and transmitted to both Houses of Congress for its review. D.C. Law 12-21 became effective on September 23, 1997.

Legislative history of Law 12-59. — Law 12-59, the “Fiscal Year 1998 Revised Budget Support Temporary Act of 1997,” was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second readings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Legislative history of Law 12-60. — Law 12-60, the “Fiscal Year 1998 Revised Budget Support Act of 1997,” was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 22, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Legislative history of Law 12-230. — Law 12-230, the “Self-Sufficiency Promotion Temporary Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-557. The Bill was adopted on first and second readings on May 5, 1998, and July 30, 1998, respectively. Signed by the Mayor on August 18, 1998, it was assigned Act No. 12-443 and transmitted to both Houses of Congress for its review. D.C. Law 12-230 became effective on April 20, 1999.

Legislative history of Law 12-241. — Law 12-241, the “Self-Sufficiency Promotion Amendment Act of 1998,” was introduced in Council and assigned Bill No. 12-558, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-573 and transmitted to both Houses of Congress for its review. D.C. Law 12-241 became effective on April 20, 1999.

Legislative history of Law 12-264. — Law 12-264, the “Technical Amendments Act of 1998,” was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

References in text. — Title XVI of the Social Security Act, referred to in subsection (b) of this section, is title XVI of the Act of August 14, 1935, ch. 531, as added by the Act of October 30, 1972, 86 Stat. 1465, Pub. L. 92-603, § 301, which is classified to 42 U.S.C. § 1381 et seq.

Editor’s notes. — Section 2002 of D.C. Law 12-60 provided that the Act shall apply as of October 1, 1997.

CASE NOTES

ANALYSIS

Divorce proceedings.
Due process.
Equal protection.
Findings.
In general.
Purpose.
Transcripts.

Divorce proceedings.

Wife, who brought suit for divorce, was indigent, so as to be entitled to proceed under in forma pauperis statute, where she was mother of five children, and her total income was \$220 per month, recently increased to \$229 per month, from Department of Public Welfare.

D.C. Code §§ 15-712, 16-904(a). *Lee v. Habib*, 424 F.2d 891, 1970 U.S. App. LEXIS 11109 (C.A.D.C. 1970).

Wife, who brought divorce suit, was indigent, so that she could proceed under in forma pauperis statute, where her take-home pay was \$70 per week, or about \$300 per month, and her living expenses were \$299, counting \$51 per month which she had to pay on debts totaling \$620. D.C. Code §§ 15-712, 16-904(a). *Lee v. Habib*, 424 F.2d 891, 1970 U.S. App. LEXIS 11109 (C.A.D.C. 1970).

In forma pauperis statute should be construed to permit indigents to proceed in good faith with nonfrivolous claims for divorce. D.C. Code §§ 15-712, 16-904(a). *Lee v. Habib*, 424

F.2d 891, 1970 U.S. App. LEXIS 11109 (C.A.D.C. 1970).

Public policy of District of Columbia is not against divorce in divorce applications by indigent plaintiffs. D.C. Code §§ 15-712, 16-904(a). *Lee v. Habib*, 424 F.2d 891, 1970 U.S. App. LEXIS 11109 (C.A.D.C. 1970).

In view of in forma pauperis statute, it is not proper to use inability of divorce applicant to pay costs of divorce action as ground for denying applicant access to fair trial. D.C. Code §§ 15-712, 16-904(a). *Lee v. Habib*, 424 F.2d 891, 1970 U.S. App. LEXIS 11109 (C.A.D.C. 1970).

One of objectives in enacting in forma pauperis statute is to give rich and poor alike equal right to divorce. D.C. Code §§ 15-712, 16-904(a). *Lee v. Habib*, 424 F.2d 891, 1970 U.S. App. LEXIS 11109 (C.A.D.C. 1970).

In forma pauperis statute does not exclude divorce actions. D.C. Code §§ 15-712, 16-904(a). *Lee v. Habib*, 424 F.2d 891, 1970 U.S. App. LEXIS 11109 (C.A.D.C. 1970).

Indigents bringing divorce suits in forma pauperis are not required to pay the \$100 minimum attorneys' fees. D.C. Code §§ 15-712, 16-918. *Lee v. Habib*, 424 F.2d 891, 1970 U.S. App. LEXIS 11109 (C.A.D.C. 1970).

It is abuse of discretion for trial courts to use criteria in passing on in forma pauperis applications that in effect set up more restrictive divorce grounds than are prescribed by statute. D.C. Code §§ 15-712, 16-904(a). *Lee v. Habib*, 424 F.2d 891, 1970 U.S. App. LEXIS 11109 (C.A.D.C. 1970).

Wives whose sole income was from public assistance were entitled to proceed in forma pauperis in their respective divorce actions without condition that each pay \$20 court costs or post security for same. D.C. Code 1981, § 15-712(a, b). *Green v. Green*, 562 A.2d 1214, 1989 D.C. App. LEXIS 160 (1989).

Due process.

Where petitioners were on welfare except for one whose income was only slightly above welfare standard, denial of their petitions to proceed in forma pauperis so as to be relieved from payment of costs with respect to their actions for either divorce or annulment deprived them not only of statutory rights but of right to due process under Constitution. D.C. Code § 15-712. *Cabillo v. Cabillo*, 317 A.2d 866, 1974 D.C. App. LEXIS 400 (1974).

Equal protection.

Court procedures which of themselves invidiously discriminate between rich and poor impair guarantees of equal justice which Constitution was designed to protect. U.S. Const. Amends. 5, 14. *Lee v. Habib*, 424 F.2d 891, 1970 U.S. App. LEXIS 11109 (C.A.D.C. 1970).

Findings.

Court is not required to make finding of

malice or bad faith in order to assess costs against party proceeding without prepayment of costs under in forma pauperis statute. D.C. Code 1981, § 15-712; Civil Rule 54-II. *Robinson v. Howard University*, 455 A.2d 1363, 1983 D.C. App. LEXIS 306 (1983).

In general.

Under District of Columbia Code, in forma pauperis relief is not limited to those who are public charges or absolutely destitute. D.C. Code § 15-712. *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

Costs of publication are paid to newspapers and not to an arm of the court and are not one of the costs covered by the in forma pauperis statute. D.C. Code § 15-712. *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

Statute that permits granting leave to proceed in forma pauperis does not provide for denial of that status based upon lack of merit of underlying action. D.C. Code 1981, § 15-712. *Lewis v. Fulwood*, 569 A.2d 594, 1990 D.C. App. LEXIS 17 (1990).

Effect of statutes permitting proceedings in forma pauperis ordinarily is not to relieve pauper from eventual payment of costs, but merely to postpone payment until final determination of the case. *Robinson v. Howard University*, 455 A.2d 1363, 1983 D.C. App. LEXIS 306 (1983).

Failure of in forma pauperis statute to include provision explicitly providing for rendering of judgment for costs at conclusion of suit or action is not significant, in light of established practice of the courts in assessing costs against indigent plaintiffs proceeding in forma pauperis. D.C. Code 1981, § 15-712; Civil Rule 54-II. *Robinson v. Howard University*, 455 A.2d 1363, 1983 D.C. App. LEXIS 306 (1983).

Costs may be assessed against a party proceeding in forma pauperis at conclusion of an unsuccessful suit as in any other case, according to standards of rule, and in exercise of court's equitable discretion. D.C. Code 1981, § 15-712; Civil Rule 54(d). *Robinson v. Howard University*, 455 A.2d 1363, 1983 D.C. App. LEXIS 306 (1983).

Trial court did not abuse its discretion in taxing per diem costs to plaintiff, who was proceeding in forma pauperis, after grant of plaintiff's motion for mistrial, even if such costs were actually attorney fees, where mistrial caused unnecessary expense of time and money for other parties and was result solely of plaintiff's failure to give adequate notification before trial of scope of her expert testimony. D.C. Code 1981, § 15-712; Civil Rule 54-II. *Robinson v.*

Howard University, 455 A.2d 1363, 1983 D.C. App. LEXIS 306 (1983).

Purpose.

Obvious intent of in forma pauperis statute is to make available to indigent, in common with his fellow citizen, full range of civil remedies contrived by court or legislature, including what appeared to be meritorious cases for divorce. D.C. Code §§ 15-712, 16-904(a). *Harris v. Harris*, 424 F.2d 806, 1970 U.S. App. LEXIS 11219 (C.A.D.C. 1970), writ of certiorari denied by 400 U.S. 826, 91 S. Ct. 50, 27 L. Ed. 2d 55, 1970 U.S. LEXIS 935 (1970).

Transcripts.

Under statute imposing duty to equate rules, practice and procedure relating to fees for transcripts in court of general sessions as nearly as practicable to those in United States District Court for District of Columbia and statute determining litigant's eligibility for free transcript in district court, and on proper certification by judge, United States must pay for

transcripts or essential portions thereof for indigent litigants allowed to appeal in forma pauperis to District of Columbia Court of Appeals. D.C. Code §§ 11-935, 15-712; 18 U.S.C. §§ 753, 753(f), 1915; D.C. Code Court of Appeals Rules, rule 43. *Lee v. Habib*, 424 F.2d 891, 1970 U.S. App. LEXIS 11109 (C.A.D.C. 1970).

Doubts about substantiality of questions on indigents' appeal and need for transcript at government expense to explore them should be resolved in favor of indigents. D.C. Code §§ 11-935, 15-712; 18 U.S.C. §§ 753, 753(f), 1915; D.C. Code Court of Appeals Rules, rule 43. *Lee v. Habib*, 424 F.2d 891, 1970 U.S. App. LEXIS 11109 (C.A.D.C. 1970).

Judges should give due consideration to indigents' motions for transcripts in cases where law appears to be settled but where appellant is able to show that his chances of changing law on appeal are strong. D.C. Code §§ 11-935, 15-712; 18 U.S.C. §§ 753, 753(f), 1915; D.C. Code Court of Appeals Rules, rule 43. *Lee v. Habib*, 424 F.2d 891, 1970 U.S. App. LEXIS 11109 (C.A.D.C. 1970).

§ 15-713. Deposits for jury trials in Superior Court.

Deposits made on demands for jury trials in accordance with rules prescribed by the Superior Court of the District of Columbia under authority granted in section 15-709 shall be earned unless, prior to three days before the time set for trial, including Sundays and legal holidays, a new date for trial is set by the court, cases are discontinued or settled, or demands for jury trials are waived.

(Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(14).)

Prior Codifications. — 1981 Ed., § 15-713. 1973 Ed., § 15-713.

§ 15-714. Witness fees for attendance in Superior Court.

(a) The fees and travel allowances to be paid any witness attending in a criminal case in the Superior Court of the District of Columbia shall be the same as those paid to witnesses who attend before the United States District Court for the District of Columbia.

(b) The fees and travel allowances to be paid any witness compelled by subpoena to attend any branch of the Superior Court of the District of Columbia other than the criminal division shall be the same amount as paid a witness compelled to attend before the United States District Court for the District of Columbia.

(c) No travel allowance shall be paid to any witness residing within the District of Columbia.

(Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1; Dec. 27, 1967, 81 Stat. 742, Pub. L. 90-226, title VIII, § 803(a); July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(15)(A).)

Cross references. — Fees of jurors serving in Superior Court, see § 11-1906.

Section references. — This section is referred to in § 11-1527.

Prior Codifications. — 1981 Ed., § 15-714. 1973 Ed., § 15-714.

CASE NOTES

ANALYSIS

In general.

Remand.

Review.

In general.

It is improper for the government to pay fees to witnesses called solely for prosecutorial interrogation. *Perez v. United States*, 968 A.2d 39, 2009 D.C. App. LEXIS 57 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 474, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7527, 78 U.S.L.W. 3237 (2009), writ of certiorari denied by 558 U.S. 975, 130 S. Ct. 473, 175 L. Ed. 2d 317, 2009 U.S. LEXIS 7505, 78 U.S.L.W. 3237 (2009).

Trial courts have discretion to award costs to prevailing party, such as witness fees and costs of depositions, reporters' transcripts on appeal,

and premiums on bonds. *Harris v. Sears Roebuck & Co.*, 695 A.2d 108, 1997 D.C. App. LEXIS 129 (1997).

Remand.

Award of expert witness fees of \$5,030 to prevailing party would be remanded for recalculation, as federal statutory limit applied to expert witness fees. Civil Rules 54, 54-I; D.C. Code 1981, § 15-714(b). *Harris v. Sears Roebuck & Co.*, 695 A.2d 108, 1997 D.C. App. LEXIS 129 (1997).

Review.

An order striking a post-judgment certification of attendance of witnesses, which certification is filed for purposes of recovering witness fees, is final and appealable. *In re Estate of Corsetti*, 928 A.2d 691, 2007 D.C. App. LEXIS 464 (2007).

§ 15-715. Witness fees in prosecutions for cruelty to children or animals.

An officer or member of the Humane Society is not entitled to any fee as a witness in the prosecution of a case of cruelty to children or animals.

(Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1.)

Prior Codifications. — 1981 Ed., § 15-715. 1973 Ed., § 15-715.

§ 15-716. Advances to Court of General Sessions Clerk for witness fees. [Repealed].

Repealed.

(July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(16).)

Prior Codifications. — 1981 Ed., § 15-716.

§ 15-717. Marriage license and related fees.

For each marriage license, the fee shall be \$2; for each certified copy of a marriage license return, the fee shall be \$1; for each certified copy of application for marriage license the fee shall be \$1; and for registering authorizations to perform marriages and issuing certificate; the fee shall be \$1.

The Superior Court of the District of Columbia may, by rule of court, increase or decrease fees provided by this section.

(July 5, 1966, 80 Stat. 265, Pub. L. 89-493, § 13(d)(2); July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(17).)

Prior Codifications. — 1981 Ed., § 15-717. 1973 Ed., § 15-717.

§ 15-718. Juror fees.

(a) A juror serving in the Superior Court of the District of Columbia shall be paid an attendance fee of \$30 for each day of actual attendance at the place of trial or hearing, except that jurors employed by a federal, state, or local government or by a private employer who pays regular compensation during the period of jury service shall not be paid an attendance fee. A person summoned for petit jury service in the Superior Court of the District of Columbia who does not serve on the petit jury shall not be paid an attendance fee.

(b) A travel allowance not to exceed \$2 per day shall be paid to all jurors serving in the Superior Court of the District of Columbia.

(c) For jury service of 5 days or less, petit or grand jurors employed full-time in the District of Columbia shall be entitled to their usual compensation less the fee received for jury service. A person shall not be considered a full-time employed juror on any day of jury service in which that person:

(1) Would not have accrued regular wages to be paid by the employer if the employee were not serving as a juror on that day; or

(2) Would not have worked more than 1/2 of a shift that extends into another day if the employee were not serving as a juror on that day. Employers with 10 or less employees shall not be required to pay a juror-employee his or her usual compensation.

(d) If an employer fails to pay an employee in violation of subsection (c) of this section, the employee may bring a civil action for recovery of wages or salary lost as a result of the violation. If an employee prevails in an action under this subsection, that employee shall be entitled to reasonable attorney fees fixed by the court.

(e) The Board of Judges of the Superior Court may increase the attendance fee and travel allowance provided by this section and, in such event, shall publish the new fee or allowance.

(Mar. 9, 1988, D.C. Law 7-81, § 2(c), 34 DCR 8115; Aug. 17, 1991, D.C. Law 9-19, title I, § 104, 38 DCR 4066; Aug. 17, 1991, D.C. Law 9-43, § 2, 38 DCR 4985; Aug. 25, 1994, D.C. Law 10-156, § 2, 41 DCR 4876; Mar. 14, 2007, D.C. Law 16-272, § 2(a), 54 DCR 856.)

Prior Codifications. — 1981 Ed., § 15-718.

Effect of amendments. — D.C. Law 16-272 added subsec. (e).

Emergency legislation. — For temporary (90-day) addition of § 15-719 1981 Ed., see § 2 of the Foster Children's Guardianship Emergency Act of 2000 (D.C. Act 13-433, August 14, 2000, 47 DCR 7467).

Legislative history of Law 7-81. — Law 7-81, the "Juror Fees Act of 1987," was intro-

duced in Council and assigned Bill No. 7-125, which was referred to the Committee of the Judiciary. The Bill was adopted on first and second readings on November 10, 1987 and November 24, 1987, respectively. Signed by the Mayor on December 10, 1987, it was assigned Act No. 7-116 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-19. — Law 9-19, the "Omnibus Budget Support Temporary

Act of 1991," was introduced in Council and assigned Bill No. 9-205. The Bill was adopted on first and second readings on May 7, 1991, and June 4, 1991, respectively. Signed by the Mayor on June 21, 1991, it was assigned Act No. 9-43 and transmitted to both Houses of Congress for its review.

Legislative history of Law 9-43. — Law 9-43, the "Juror Fees Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-165, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 4, 1991, and July 2, 1991, respectively. Signed by the Mayor on July 24, 1991, it was assigned Act No. 9-80 and transmitted to both Houses of Congress for its review.

Legislative history of Law 10-156. — Law 10-156, the "Jury Fee Act of 1994," was introduced in Council and assigned Bill No. 10-41,

which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on June 7, 1994, and June 21, 1994, respectively. Signed by the Mayor on July 8, 1994, it was assigned Act No. 10-272 and transmitted to both Houses of Congress for its review. D.C. Law 10-156 became effective on August 25, 1994.

Legislative history of Law 16-272. — Law 16-272, the "Jury Trial Improvements Act of 2006", was introduced in Council and assigned Bill No. 16-700, which was referred to Committee on Judiciary. The Bill was adopted on first and second readings on December 5, 2006, and December 19, 2006, respectively. Signed by the Mayor on December 28, 2006, it was assigned Act No. 16-628 and transmitted to both Houses of Congress for its review. D.C. Law 16-272 became effective on March 14, 2007.

§ 15-719. Adoption court costs and fees.

Any person who files a petition pursuant to Chapter 3 of Title 16 to adopt a child who is a respondent in a neglect proceeding or who has been adjudicated to be neglected as defined in Chapter 23 of Title 16 shall not be required to pay court costs or fees in the Superior Court of the District of Columbia.

(Apr. 4, 2001, D.C. Law 13-273, § 2(c), 48 DCR 1637.)

Temporary Addition of Section. — Section 2(b) of D.C. Law 13-208 added this section.

Section 5(b) of D.C. Law 13-208 provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary (90 day) addition of this section, see § 2(b) of the Foster Children's Guardianship Legislative Review Emergency Act of 2000 (D.C. Act 13-490, November 29, 2000, 48 DCR 63).

For temporary (90 day) addition of § 15-719, see § 2(b) of the Foster Children's Guardianship Legislative Review Emergency Amendment Act of 2000 (D.C. Act 13-490, December 18, 2000, 48 DCR 45).

For temporary (90 day) addition of section, see § 2(c) of Foster Children's Guardianship Congressional Review Emergency Amendment Act of 2001 (D.C. Act 14-4, February 13, 2001, 48 DCR 2254).

Legislative history of Law 13-208. — Law 13-208, the "Foster Children's Guardianship

Temporary Act of 2000", was introduced in Council and assigned Bill No. 13-762, which was retained by Council. The Bill was adopted on first and second readings on July 11, 2000, and October 3, 2000, respectively. Signed by the Mayor on October 24, 2000, it was assigned Act No. 13-457 and transmitted to both Houses of Congress for its review. D.C. Law 13-208 became effective on March 31, 2001.

Legislative history of Law 13-273. — Law 13-273, the "Foster Children's Guardianship Act of 2000", was introduced in Council and assigned Bill No. 13-763, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on December 5, 2000, and December 19, 2000, respectively. Signed by the Mayor on January 16, 2001, it was assigned Act No. 13-566 and transmitted to both Houses of Congress for its review. D.C. Law 13-273 became effective on April 4, 2001.

CHAPTER 9. UNIFORM FOREIGN-MONEY CLAIMS.

Sec.

- 15-901. Definitions.
- 15-902. Variation by agreement.
- 15-903. Determining money of the claim.
- 15-904. Determining amount of the money of certain contract claims.
- 15-905. Asserting and defending a foreign-money claim.
- 15-906. Judgments and awards on foreign-money claims; times of money conversion; form of judgment.
- 15-907. Conversions of foreign money in distribution proceeding.

Sec.

- 15-908. Prejudgment and judgment interest.
- 15-909. Enforcement of foreign judgments.
- 15-910. Determining United States dollar value of foreign-money claims for limited purposes.
- 15-911. Effect of currency revalorization.
- 15-912. Supplementary general principles of law.
- 15-913. Applicability.
- 15-914. Uniformity of application and construction.

§ 15-901. Definitions.

For the purposes of this chapter, the term:

(1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

(2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

(3) "Conversion date" means the banking day next preceding the date on which money, in accordance with this chapter, is:

(A) Paid to a claimant in an action or distribution proceeding;

(B) Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

(C) Used to recoup, set off, or counterclaim in different moneys in an action or distribution proceeding.

(4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.

(5) "Foreign money" means money other than money of the United States of America.

(6) "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in, or measured by, a foreign money.

(7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by an intergovernmental agreement.

(8) "Money of the claim" means the money determined as proper pursuant to section 15-904.

(9) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, 2 or more persons having a joint or common trust, or any other legal or commercial entity.

(10) "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to, or reasonably usable by, a person obligated to pay or to state a

rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transactions giving rise to the foreign-money claim.

(11) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding 2 days.

(12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791; Mar. 13, 2004, D.C. Law 15-105, § 101, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 85(e), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 15-901.

Effect of amendments. — D.C. Law 15-105, in the introductory language, substituted "this chapter" for "this act".

D.C. Law 15-354, in the introductory language, substituted "this chapter" for "this subchapter".

Legislative history of Law 11-85. — Law 11-85, the "Uniform Foreign Money Claims Act of 1995," was introduced in Council and assigned Bill No. 11-230, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 28, 1995, it was assigned Act No. 11-164 and transmitted to both Houses of Congress for its review. D.C. Law 11-85 became effective on February 10, 1996.

Legislative history of Law 15-105. — Law 15-105, the "Technical Amendments Act of 2003", was introduced in Council and assigned Bill No. 15-437, which was referred to the

Committee of the Whole. The Bill was adopted on first and second readings on November 4, 2003, and December 2, 2003, respectively. Signed by the Mayor on January 6, 2004, it was assigned Act No. 15-291 and transmitted to both Houses of Congress for its review. D.C. Law 15-105 became effective on March 13, 2004.

Legislative history of Law 15-354. — Law 15-354, the "Technical Amendments Act of 2004", was introduced in Council and assigned Bill No. 15-1130 which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 7, 2004, and December 21, 2004, respectively. Signed by the Mayor on February 9, 2005, it was assigned Act No. 15-770 and transmitted to both Houses of Congress for its review. D.C. Law 15-354 became effective on April 13, 2005.

Editor's notes. — Uniform Law: This section is based upon § 1 of the Uniform Foreign-Money Claims Act.

§ 15-902. Variation by agreement.

(a) The effect of this chapter may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

(b) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791; Mar. 13, 2004, D.C. Law 15-105, § 101, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 85(e), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 15-902.
Effect of amendments. — D.C. Law 15-105, in subsec. (a), substituted “this chapter” for “this act”.

D.C. Law 15-354, in subsec. (a), substituted “this chapter” for “this subchapter”.

D.C. Law 15-354 validated a previously made technical correction.

Legislative history of Law 11-85. — For

legislative history of D.C. Law 11-85, see Historical and Statutory Notes following § 15-901.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 15-901.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 15-901.

Editor’s notes. — Uniform Law: This section is based upon § 3 of the Uniform Foreign-Money Claims Act.

§ 15-903. Determining money of the claim.

(a) The money in which the parties to a transaction have agreed that payment is to be made, is the proper money of the claim for payment.

(b) If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

(1) Regularly used between the parties as a matter of usage or course of dealing;

(2) Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(3) In which the loss was ultimately felt or will be incurred by the party claimant.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Prior Codifications. — 1981 Ed., § 15-903.

Legislative history of Law 11-85. — For legislative history of D.C. Law 11-85, see Historical and Statutory Notes following § 15-901.

Editor’s notes. — Uniform Law: This section is based upon § 4 of the Uniform Foreign-Money Claims Act.

§ 15-904. Determining amount of the money of certain contract claims.

(a) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(b) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(c) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor’s obligation to be paid in the debtor’s money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Section references. — This section is referred to in §§ 15-901 and 15-906.

Prior Codifications. — 1981 Ed., § 15-904.

Legislative history of Law 11-85. — For legislative history of D.C. Law 11-85, see Historical and Statutory Notes following § 15-901.

Editor's notes. — Uniform Law: This section is based upon § 5 of the Uniform Foreign-Money Claims Act.

§ 15-905. Asserting and defending a foreign-money claim.

(a) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

(b) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

(c) A person may assert a defense, set-off, recoupment, or counterclaim in any money without regard to the money of other claims.

(d) The determination of the proper money of the claim is a question of law.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Prior Codifications. — 1981 Ed., § 15-905.

Legislative history of Law 11-85. — For legislative history of D.C. Law 11-85, see Historical and Statutory Notes following § 15-901.

Editor's notes. — Uniform Law: This section is based upon § 6 of the Uniform Foreign-Money Claims Act.

§ 15-906. Judgments and awards on foreign-money claims; times of money conversion; form of judgment.

(a) Except as provided in subsection (c) of this section, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

(b) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

(c) Assessed costs must be entered in United States dollars.

(d) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for the payment.

(e) A judgment or award made in an action or distribution proceeding on both a defense, set-off, recoupment, or counterclaim and the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and specifying the rates of exchange used.

(f) A judgment substantially in the following from [form] complies with subsection (a) of this section:

"IT IS ADJUDGED AND ORDERED, that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus

interest on that sum at the rate of interest pursuant to section 15-908 or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.”.

(g) If a contract claim is of the type covered by section 15-904(a) or (b), the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(h) A judgment must be filed and indexed in foreign money in the same manner as other judgments and has the same effect as a lien. It may be discharged by payment.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Prior Codifications. — 1981 Ed., § 15-906.

Legislative history of Law 11-85. — For legislative history of D.C. Law 11-85, see Historical and Statutory Notes following § 15-901.

Editor’s notes. — Uniform Law: This section is based upon § 7 of the Uniform Foreign-Money Claims Act.

§ 15-907. Conversions of foreign money in distribution proceeding.

The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Section references. — This section is referred to in § 15-909.

Prior Codifications. — 1981 Ed., § 15-907.

Legislative history of Law 11-85. — For legislative history of D.C. Law 11-85, see Historical and Statutory Notes following § 15-901.

Editor’s notes. — Uniform Law: This section is based upon § 8 of the Uniform Foreign-Money Claims Act.

§ 15-908. Prejudgment and judgment interest.

(a) With respect to a foreign-money claim, recovery of prejudgment or pre-award interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection (b) of this section, are matters of the substantive law governing the right to recovery under the conflict of laws rules of the District.

(b) The court or arbitrator shall increase or decrease the amount of prejudgment or pre-award interest otherwise payable in a judgment or award

in foreign money to the extent required by the law of the District governing a failure to make or accept an offer of settlement or an offer of judgment, or to the extent required by the law of the District governing conduct by a party or its attorney causing undue delay or expense.

(c) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of the District.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Section references. — This section is referred to in § 15-906.

Prior Codifications. — 1981 Ed., § 15-908.

Legislative history of Law 11-85. — For legislative history of D.C. Law 11-85, see Historical and Statutory Notes following § 15-901.

Editor's notes. — Uniform Law: This section is based upon § 9 of the Uniform Foreign-Money Claims Act.

§ 15-909. Enforcement of foreign judgments.

(a) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in the District as enforceable, the enforcing judgment must be entered as provided in section 15-907, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

(b) A foreign judgment may be filed in accordance with any rule or statute of the District providing a procedure for its recognition and enforcement.

(c) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in the District.

(d) A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in the District in United States dollars only.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Prior Codifications. — 1981 Ed., § 15-909.

Legislative history of Law 11-85. — For legislative history of D.C. Law 11-85, see Historical and Statutory Notes following § 15-901.

Editor's notes. — Uniform Law: This section is based upon § 10 of the Uniform Foreign-Money Claims Act.

§ 15-910. Determining United States dollar value of foreign-money claims for limited purposes.

(a) Computations under this section are for the limited purposes of this section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(b) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking, must be ascertained as provided in subsections (c) and (d) of this section.

(c) A party seeking process, costs, bond, or other undertaking under subsection (b) of this section shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

(d) A party seeking the process, costs, bond, or other undertaking under subsection (b) of this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Prior Codifications. — 1981 Ed., § 15-910.
Legislative history of Law 11-85. — For legislative history of D.C. Law 11-85, see Historical and Statutory Notes following § 15-901.

Editor's notes. — Uniform Law: This section is based upon § 11 of the Uniform Foreign-Money Claims Act.

§ 15-911. Effect of currency revalorization.

(a) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(b) If substitution under subsection (a) of this section occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Prior Codifications. — 1981 Ed., § 15-911.
Legislative history of Law 11-85. — For legislative history of D.C. Law 11-85, see Historical and Statutory Notes following § 15-901.

Editor's notes. — Uniform Law: This section is based upon § 12 of the Uniform Foreign-Money Claims Act.

§ 15-912. Supplementary general principles of law.

Unless displaced by particular provisions of this chapter, the principles of law and equity, including the law merchant, and the laws relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement the provisions of this chapter.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791; Mar. 13, 2004, D.C. Law 15-105, § 101, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 85(e), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 15-912.

Effect of amendments. — D.C. Law 15-105 substituted “this chapter” for “this act” in both places.

D.C. Law 15-354 substituted “this chapter” for “this subchapter”.

Legislative history of Law 11-85. — For legislative history of D.C. Law 11-85, see Historical and Statutory Notes following § 15-901.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 15-901.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 15-901.

Editor’s notes. — Uniform Law: This section is based upon § 13 of the Uniform Foreign-Money Claims Act.

§ 15-913. Applicability.

(a) This chapter applies only to a foreign-money claim in an action or distribution proceeding.

(b) This chapter applies to foreign money issues even if other law, under the conflict of laws rules of the District of Columbia, applies to other issues in the action or distribution proceeding.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791; Mar. 13, 1004, D.C. Law 15-105, § 101, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 85(e), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 15-913.

Effect of amendments. — D.C. Law 15-105, in subsecs. (a) and (b), substituted “this chapter” for “this act”.

D.C. Law 15-354, in subsecs. (a) and (b), substituted “this chapter” for “this subchapter”.

Legislative history of Law 11-85. — For legislative history of D.C. Law 11-85, see Historical and Statutory Notes following § 15-901.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 15-901.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 15-901.

Editor’s notes. — Uniform Law: This section is based upon § 2 of the Uniform Foreign-Money Claims Act.

§ 15-914. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting similar legislation.

(Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791; Mar. 13, 2004, D.C. Law 15-105, § 101, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 85(e), 52 DCR 2638.)

Prior Codifications. — 1981 Ed., § 15-914.

Effect of amendments. — D.C. Law 15-105 substituted “this chapter” for “this act” in two places.

D.C. Law 15-354 substituted “this chapter” for “this subchapter”.

Legislative history of Law 11-85. — For legislative history of D.C. Law 11-85, see Historical and Statutory Notes following § 15-901.

Legislative history of Law 15-105. — For Law 15-105, see notes following § 15-901.

Legislative history of Law 15-354. — For Law 15-354, see notes following § 15-901.

Editor’s notes. — Uniform Law: This section is based upon § 14 of the Uniform Foreign-Money Claims Act.

